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Report of the United Nations Commission on International Trade Law on its thirty-fourth session

25 June-13 July 2001

General Assembly
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Fifty-sixth session
Supplement No. 17 (A/56/17)

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Chapter I
Introduction

1. The present report of the United Nations Commission on International Trade Law (UNCITRAL) covers the thirty-fourth session of the Commission, held in Vienna from 25 June to 13 July 2001.

2. Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, the present report is submitted to the Assembly and is also submitted for comment to the United Nations Conference on Trade and Development (UNCTAD).

Chapter II
Organization of the session

A. Opening of the session

3. UNCITRAL commenced its thirty-fourth session on 25 June 2001. The session was opened by Jeffrey Chan Wah Teck (Singapore), immediate past Chairman of the Commission.

B. Membership and attendance

4. In its resolution 2205 (XXI), the General Assembly established the Commission with a membership of 29 States, elected by the Assembly. In its resolution 3108 (XXVIII) of 12 December 1973, the Assembly increased the membership of the Commission from 29 to 36 States. The current members of the Commission, elected on 24 November 1997 and on 16 October 2000, are the following States, whose term of office expires on the last day prior to the beginning of the annual session of the Commission in the year indicated:[1] Austria (2004), Benin (2007), Brazil (2007), Burkina Faso (2004), Cameroon (2007), Canada (2007), China (2007), Colombia (2004), Fiji (2004), France (2007), Germany (2007), Honduras (2004), Hungary (2004), India (2004), Iran (Islamic Republic of) (2004), Italy (2004), Japan (2007), Kenya (2004), Lithuania (2004), Mexico (2007), Morocco (2007), Paraguay (2004), Romania (2004), Russian Federation (2007), Rwanda (2007), Sierra Leone (2007), Singapore (2007), Spain (2004), Sudan (2004), Sweden (2007), Thailand (2004), the former Yugoslav Republic of Macedonia (2007), Uganda (2004), United States of America (2004), United Kingdom of Great Britain and Northern Ireland (2007) and Uruguay (2004, alternating annually with Argentina).

5. With the exception of Benin, Paraguay and Uganda, all the members of the Commission were represented at the session.

6. The session was attended by observers from the following States: Argentina, Australia, Azerbaijan, Belgium, Bulgaria, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Ecuador, Egypt, Finland, Greece, Guatemala, Indonesia, Iraq, Ireland, Kuwait, Lebanon, Libyan Arab Jamahiriya, Luxembourg, Malawi, Malaysia, Nigeria, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Saudi Arabia, Slovakia, Slovenia, Switzerland, Turkey, Ukraine, Venezuela, Viet Nam, Yugoslavia and Zimbabwe.

7. The session was also attended by observers from the following international organizations:

(a) United Nations system

International Monetary Fund

United Nations Conference on Trade and Development

(b) Intergovernmental organizations

Asian-African Legal Consultative Organization

European Bank for Reconstruction and Development

European Centre for Peace and Development

International Institute for the Unification of Private Law

Organisation for Economic Cooperation and Development

Organisation intergouvernementale pour les transports internationaux ferroviaires

Permanent Court of Arbitration

Southeast European Cooperative Initiative

(c) International non-governmental organizations invited by the Commission

Association internationale des jeunes avocats

Association of the Bar of the City of New York

Cairo Regional Centre for International Commercial Arbitration

Chartered Institute of Arbitrators

Commercial Finance Association

European Banking Federation

European Federation of Factoring Associations

European Law Students Association

European Lawyers' Union

Factors Chain International

Institute for International Legal Information

International Chamber of Commerce

International Law Association

International Maritime Committee

International Swaps and Derivatives Association

Moot Alumni Association

University of the West Indies

8. The Commission was appreciative of the fact that international non-governmental organizations that had expertise regarding the major items on the agenda of the current session had accepted the invitation to take part in the meetings. Aware that it was crucial for the quality of texts it formulated that relevant non-governmental organizations should participate in its sessions and in its working groups, the Commission requested the Secretariat to continue to invite such organizations to its sessions based on their particular qualifications.

C. Election of officers[2]

9. The Commission elected the following officers:

Chairman: Alejandro Ogarrio Ramirez-España (Mexico)

Vice-Chairmen: Louis-Paul Enouga (Cameroon)
Xiaoyan Zhou (China)
David Morán Bovio (Spain)

Rapporteur: Victoria Gavrilescu (Romania)

D. Agenda

10. The agenda of the session, as adopted by the Commission at its 711th meeting, on 25 June 2001, was as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Draft Convention on Assignment of Receivables in International Trade.
5. Draft UNCITRAL Model Law on Electronic Signatures and draft Guide to Enactment.
6. Possible future work on electronic commerce.
7. Insolvency law.
8. Settlement of commercial disputes.
9. Monitoring implementation of the 1958 New York Convention.
10. Possible future work on transport law.
11. Possible future work on security interests.
12. Possible future work on privately financed infrastructure projects.
13. Enlargement of membership of the Commission.
14. Working methods of the Commission.
15. Case law on UNCITRAL texts (CLOUT).
16. Digest of United Nations Sales Convention case law: interpretation of texts.
17. Training and technical assistance.
18. Status and promotion of UNCITRAL legal texts.
19. General Assembly resolutions on the work of the Commission.
20. Coordination and cooperation.
21. Other business.
22. Date and place of future meetings.
23. Adoption of the report of the Commission.

E. Establishment of two Committees of the Whole

11. The Commission established two Committees of the Whole (Committee I and Committee II) and referred to them for consideration agenda items 4 and 5, respectively. The Commission elected Leonel Perez-Nieto Castro (Mexico) Chairman of Committee I and José María Abascal Zamora (Mexico) Chairman of Committee II. Committee I met from 25 June to 2 July and held 12 meetings. Committee II met from 3 to 6 July and held 8 meetings. On 2 July, David Morán Bovio (Vice-Chairman of the Commission) substituted for the Chairman of Committee I.

F. Adoption of the report

12. At its 722nd, 730th, 737th and 738th meetings, on 2, 6 and 13 July 2001, the Commission adopted the present report by consensus.

Chapter III
Draft Convention on assignment of receivables in international trade

A. Introduction

13. Pursuant to a decision taken by the Commission at its twenty-eighth session in 1995,[3] the Working Group devoted its twenty-fourth to thirty-first sessions to the preparation of a uniform law on assignment of receivables (for the reports of those sessions, see documents A/CN.9/420, A/CN.9/432, A/CN.9/434, A/CN.9/445, A/CN.9/447, A/CN.9/455, A/CN.9/456 and A/CN.9/466). The work was carried out on the basis of background papers prepared by the Secretariat.

14. At its thirty-first session, the Working Group completed its work and submitted to the Commission, at its thirty-third session, a draft Convention on Assignment of Receivables in International Trade (for the report of the Working Group, see A/CN.9/466). At that session, the Commission adopted draft articles 1-17 of the draft Convention and referred the remaining draft articles back to the Working Group.[4] The Commission had before it:

(a) Text of the draft Convention as adopted by the Working Group (A/CN.9/466, annex I);

(b) An analytical commentary on the draft Convention prepared by the Secretariat (A/CN.9/470);

(c) Comments by Governments and international organizations (A/CN.9/472 and Add.1-5).

The Working Group met in December 2000 and completed the task assigned to it by the Commission (for the report of the Working Group, see A/CN.9/486).

15. At its current session, the Commission had before it:

(a) Consolidated version of the draft Convention as adopted by the Working Group (A/CN.9/486, annex I);

(b) A revised version of the analytical commentary on the draft Convention prepared by the Secretariat (A/CN.9/489 and Add.1);

(c) Comments by Governments and international organizations (A/CN.9/490 and Add.1-5);

(d) Report on pending and other issues prepared by the Secretariat (A/CN.9/491).

In view of the fact that the Commission had considered and adopted draft articles 1-17 at its thirty-third session, it decided to begin its considerations with draft article 18.

B. Consideration of draft articles

Article 18: Notification of the debtor

16. The text of draft article 18 as considered by the Commission was as follows:

> "1. Notification of the assignment or a payment instruction is effective when received by the debtor if it is in a language that is reasonably expected to inform the debtor about its contents. It is sufficient if notification of the assignment or a payment instruction is in the language of the original contract.
>
> "2. Notification of the assignment or a payment instruction may relate to receivables arising after notification.
>
> "3. Notification of a subsequent assignment constitutes notification of all prior assignments."

17. The suggestion was made that notification of the assignment should be exclusively in the language of the original contract. It was widely felt, however, that the more flexible formulation of paragraph 1, which allowed for a notification to be given in any language that was "reasonably expected" to be understood by the debtor, was preferable. After discussion, the Commission approved the substance of article 18 unchanged and referred it to the drafting group.

Article 19: Debtor's discharge by payment

18. The text of draft article 19 as considered by the Commission was as follows:

> "1. Until the debtor receives notification of the assignment, the debtor is entitled to be discharged by paying in accordance with the original contract.
>
> "2. After the debtor receives notification of the assignment, subject to paragraphs 3 to 8 of this article, the debtor is discharged only by paying the assignee or, if otherwise instructed in the notification of the assignment or subsequently by the assignee in a writing received by the debtor, in accordance with such payment instruction.
>
> "3. If the debtor receives more than one payment instruction relating to a single assignment of the same receivable by the same assignor, the debtor is discharged by paying in accordance with the last payment instruction received from the assignee before payment.
>
> "4. If the debtor receives notification of more than one assignment of the same receivable made by the same assignor, the debtor is discharged by paying in accordance with the first notification received.
>
> "5. If the debtor receives notification of one or more subsequent assignments, the debtor is discharged by paying in accordance with the notification of the last of such subsequent assignments.
>
> "6. If the debtor receives notification of the assignment of a part of or an undivided interest in one or more receivables, the debtor is discharged by paying in accordance with the notification or in accordance with this article as if the debtor had not received the notification. If the debtor pays in accordance with the notification, the debtor is discharged only to the extent of the part or undivided interest paid.
>
> "7. If the debtor receives notification of the assignment from the assignee, the debtor is entitled to request the assignee to provide within a reasonable period of time adequate proof that the assignment from the initial assignor to the initial assignee and any intermediate assignment have been made and, unless the assignee does so, the debtor is discharged by paying in accordance with this article as if the notification from the assignee had not been received. Adequate proof of an assignment includes but is not limited to any writing emanating from the assignor and indicating that the assignment has taken place.
>
> "8. This article does not affect any other ground on which payment by the debtor to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund discharges the debtor."

19. With respect to paragraph 2, the question was raised whether the debtor would need to determine before paying that an assignment had actually been made and that that assignment was valid. In response, it was noted that the Working Group had approved paragraph 2 on the understanding that that matter was not a problem in practice and thus did not need to be addressed in the draft Convention (see A/CN.9/456, para. 192, and A/CN.9/466, paras. 128 and 131). It was also stated that a person with sufficient knowledge about a transaction to notify the debtor would in most cases be a genuine assignee. In addition, it was observed that placing on the debtor the risk of the invalidity of an assignment was appropriate and in line with currently existing national law.

20. As to paragraph 6, the concern was expressed that it could undermine practices involving partial assignments. In order to address that concern, the suggestion was made that paragraph 6 should be deleted. That suggestion was objected to. It was stated that paragraph 6 did not invalidate partial assignments. It merely provided that, unless the debtor agreed to notification of a partial assignment, the assignee would have to obtain payment through other means (for example, by structuring the financing transaction along the lines of draft art. 26, para. 2). It was also observed

that, if paragraph 6 were to be deleted, the issue of additional cost to the debtor arising as a result of the need to pay several assignees would need to be addressed by giving the debtor the right to seek compensation. In that context, it was recalled that the Working Group had considered that alternative and decided not to adopt it. Paragraph 6 was adopted instead in order to protect the debtor in a sufficient but flexible way, without creating liability and without prescribing in a regulatory manner what the assignor, the assignee or the debtor should do (see A/CN.9/491, para. 19).

21. As to paragraph 7, a number of concerns were expressed. One concern was that paragraph 7 did not adequately cover situations in which subsequent assignments were combined with duplicate assignments (where, for example, A assigned to B and B assigned to D, while A assigned also to C and C assigned to E). It was widely felt, however, that paragraph 7, in combination with paragraphs 4 and 5, was sufficient. Another concern was that paragraph 7 failed to address the question whether the payment obligation was suspended or the debtor was in breach and subject to paying interest, if payment became due while the debtor would wait to receive the adequate proof requested. In response, it was recalled that the Working Group had decided not to address that matter explicitly in the draft Convention, since stating explicitly that the payment obligation was suspended might encourage abusive practices and, in any case, interest-related matters did not lend themselves to unification (see A/CN.9/466, paras. 126-128 and A/CN.9/456, para. 189). It was also observed that if payment became due before the debtor received the information requested and had time to act on it and the debtor had no way to safely discharge its obligation, it was implicit in paragraph 7 that the payment obligation would be suspended. In addition, it was pointed out that paragraph 7 was based on the assumption that in such a case, under paragraph 8, the debtor could discharge its obligation in different ways (e.g. by way of payment into court or a deposit fund). It was agreed that that matter could usefully be clarified in the commentary on the draft Convention.

22. Yet another concern was that paragraph 7 failed to protect the debtor in situations where the debtor would misjudge the proof provided by the assignee. While that concern was met with some sympathy, it was agreed that that problem could be resolved only by requiring that notification be given by the assignor or by the assignee with the consent of the assignor. It was stated that that would be a radical and unwelcome change in the draft Convention, since the right of the assignee to notify the debtor independently of the assignor was one of the essential features of the draft Convention. After discussion, the Commission approved the substance of article 19 unchanged and referred it to the drafting group.

Article 20: Defences and rights of set-off of the debtor

23. The text of draft article 20 as considered by the Commission was as follows:

> "1. In a claim by the assignee against the debtor for payment of the assigned receivables, the debtor may raise against the assignee all defences and rights of set-off arising from the original contract, or any other contract that was part of the same transaction, of which the debtor could avail itself if such claim were made by the assignor.
>
> "2. The debtor may raise against the assignee any other right of set-off, provided that it was available to the debtor at the time notification of the assignment was received.
>
> "3. Notwithstanding paragraphs 1 and 2 of this article, defences and rights of set-off that the debtor may raise pursuant to article 11 against the assignor for breach of agreements limiting in any way the assignor's right to assign its receivables are not available to the debtor against the assignee."

24. It was noted that, in some jurisdictions, if the assignment was effective, the debtor could lose any right of set-off. In order to avoid that result, it was agreed that the words "as if the assignment had never been made" should be inserted at the end of paragraph 1.

25. The suggestion was made that the substance of draft article 30 should be included in draft article 20 to ensure that it would not be subject to an opt-out by States. In support, it was stated that it was essential for financiers to know what their rights and the countervailing rights of debtors were or, at least, to which law to look to determine what those rights were. That suggestion was objected to. It was observed that

the rule in draft article 30 should remain subject to an opt-out, since it did not belong in a substantive law text. It was also stated that including in draft article 20 a rule along the lines of draft article 30 would unduly complicate draft article 20, since the public policy and mandatory law exceptions of draft articles 32 and 33 would also need to be reproduced in draft article 20.

26. The view was expressed that paragraph 2 should be aligned with draft article 19, paragraph 6, leaving the effectiveness of a notification of a partial assignment for all relevant purposes to the discretion of the debtor. Recalling the decision of the Working Group on that matter (see A/CN.9/486, para. 19), the Commission felt that such an approach would unnecessarily undermine existing practices. It was stated that the rule in draft article 19, paragraph 6, was justified by the need to protect the debtor from additional cost, a need that did not arise in draft article 20, paragraph 2.

27. The suggestion was also made that in paragraph 3 reference should be made to draft article 12, which reproduced the rule contained in draft article 11, paragraph 1. Subject to that change and the change referred to in paragraph 24 above, the Commission approved the substance of draft article 20 and referred it to the drafting group.

Article 21: Agreement not to raise defences or rights of set-off

28. The text of draft article 21 as considered by the Commission was as follows:

> "1. Without prejudice to the law governing the protection of the debtor in transactions made for personal, family or household purposes in the State in which the debtor is located, the debtor may agree with the assignor in a writing signed by the debtor not to raise against the assignee the defences and rights of set-off that it could raise pursuant to article 20. Such an agreement precludes the debtor from raising against the assignee those defences and rights of set-off.
>
> "2. The debtor may not exclude:
>
> "(a) Defences arising from fraudulent acts on the part of the assignee; or
>
> "(b) Defences based on the debtor's incapacity.
>
> "3. Such an agreement may be modified only by an agreement in a writing signed by the debtor. The effect of such a modification as against the assignee is determined by article 22, paragraph 2."

29. The Commission approved the substance of draft article 21 unchanged and referred it to the drafting group (for a change decided later in the discussion, see para. 186).

Article 22: Modification of the original contract

30. The text of draft article 22 as considered by the Commission was as follows:

> "1. An agreement concluded before notification of the assignment between the assignor and the debtor that affects the assignee's rights is effective as against the assignee and the assignee acquires corresponding rights.
>
> "2. After notification of the assignment, an agreement between the assignor and the debtor that affects the assignee's rights is ineffective as against the assignee unless:
>
> "(a) The assignee consents to it; or
>
> "(b) The receivable is not fully earned by performance and either the modification is provided for in the original contract or, in the context of the original contract, a reasonable assignee would consent to the modification.
>
> "3. Paragraphs 1 and 2 of this article do not affect any right of the assignor or the assignee for breach of an agreement between them."

31. The Commission approved the substance of draft article 22 unchanged and referred it to the drafting group.

Article 23: Recovery of payments

32. The text of draft article 23 as considered by the Commission was as follows:

> "Without prejudice to the law governing the protection of the debtor in transactions made for personal, family or household purposes in the State in which the debtor is located, failure of the assignor to perform the original contract does not entitle the debtor to recover from the assignee a

sum paid by the debtor to the assignor or the assignee."

33. The Commission approved the substance of draft article 23 unchanged and referred it to the drafting group (for a change decided later in the discussion, see para. 186).

Section III: Other parties

Article 24: Law applicable to competing rights

34. The text of draft article 24 as considered by the Commission was as follows:

"1. With the exception of matters that are settled elsewhere in this Convention and subject to articles 25 and 26:

"(a) With respect to the right of a competing claimant, the law of the State in which the assignor is located governs:

"(i) The characteristics and priority of the right of an assignee in the assigned receivable; and

"(ii) The characteristics and priority of the right of the assignee in proceeds that are receivables whose assignment is governed by this Convention[;

"(b) With respect to the right of a competing claimant, the characteristics and priority of the right of the assignee in proceeds described below are governed by:

"(i) In the case of money or negotiable instruments not held in a bank account or through a securities intermediary, the law of the State in which such money or instruments are located;

"(ii) In the case of investment securities held through a securities intermediary, the law of the State in which the securities intermediary is located;

"(iii) In the case of bank deposits, the law of the State in which the bank is located[; and

"(iv) In the case of receivables whose assignment is governed by this Convention, the law of the State in which the assignor is located];

"[(c) The existence and characteristics of the right of a competing claimant in proceeds described in paragraph 1 (b) of this article are governed by the law indicated in that paragraph]].

"2. For the purposes of this article and article 31, the characteristics of a right are:

"(a) Whether it is a personal or property right; and

"(b) Whether or not it is security for indebtedness or other obligation."

35. It was noted that subparagraphs (b) and (c) of paragraph 1 raised both a problem of substance and a problem of procedure. The problem of substance arose as a result of the lack of a universally acceptable solution as to the law applicable to priority issues with respect to deposit accounts. It also related to the difficulty to reach consensus as to the location of a bank (or an account). The problem of procedure related to the need to ensure that draft article 24 would be consistent with the approach taken in the draft Convention on the law applicable to dispositions of securities currently being prepared by the Hague Conference on Private International Law. In that regard, it was noted that the place of the relevant intermediary approach (PRIMA) appeared to emerge from the Hague Conference as a generally acceptable solution but that it would be very difficult for the Commission to reach agreement on a text that would be consistent with the text of the Hague Conference which had not been finalized yet. It was also stated that, no matter how important subparagraphs (b) and (c) might be, their finalization would take time and could significantly delay the adoption of the draft Convention by the Commission. It was, therefore, observed that financiers would need to rely on draft article 26 in order to ensure priority with respect to proceeds. As to the priority rule with respect to proceeds in the form of negotiable instruments, it was agreed that, while agreement could be reached on a rule along the lines of paragraph 1 (b) (i), in the absence of a rule as to the law applicable to priority issues with respect to deposit accounts and securities, paragraph 1 (b) (i) would not be sufficient in addressing the most typical proceeds of receivables. After discussion, it was agreed that subparagraphs (b) and (c) of paragraph 1 should be deleted.

36. As to paragraph 1 (a) (ii), differing views were expressed. One view was that it could be deleted since, in any case, it would not cover the most typical proceeds of receivables, namely, deposit accounts, negotiable instruments and securities. Another view was that paragraph 1 (a) (ii) remained useful and should be retained. After discussion, the Commission agreed that paragraph 1 (a) (ii) could be removed from draft article 24 on the understanding that its placement in draft article 26 would be considered at a later stage (see para. 45).

37. With respect to paragraph 2, the concern was expressed that it might inappropriately refer matters unrelated to priority to the law of the assignor's location. In order to address that concern, the suggestion was made that paragraph 2 should be deleted. That suggestion was objected to on the ground that the matters addressed in paragraph 2 could arise in the context of and be very relevant to a priority conflict. In order to make that point sufficiently clear, the suggestion was made that the thrust of paragraph 2 should be recast in the context of article 5, subparagraph (g) (definition of "priority"). There was sufficient support for that suggestion on the understanding that it would make it abundantly clear that the matters addressed in paragraph 2 would be referred to the law of the assignor's location only to the extent they were relevant for the purpose of determining priority. After discussion, subject to the deletion of paragraphs 1 (a) (ii), (b) and (c) and 2, the consideration of the inclusion of paragraph 1 (a) (ii) in draft article 26 and the inclusion of the thrust of paragraph 2 in draft article 5, subparagraph (g), the Commission approved the substance of draft article 24 and referred it and draft article 5, subparagraph (g), to the drafting group (for changes to draft article 5, subparagraph (g), decided later, see paras. 149 and 162).

Article 25: Public policy and preferential rights

38. The text of draft article 25 as considered by the Commission was as follows:

> "1. The application of a provision of the law of the State in which the assignor is located may be refused by a court or other competent authority only if that provision is manifestly contrary to the public policy of the forum State.
>
> "2. In an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority status over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding article 24. A State may deposit at any time a declaration identifying any such preferential right."

39. The concern was expressed that the word "manifestly" in paragraph 1 introduced an inappropriate limitation to the ability of a court or other competent authority to refuse the application of a provision of the applicable law that was contrary to the public policy of the forum State. In order to address that concern, the suggestion was made that that word should be deleted. That suggestion was objected to. It was widely felt that the word "manifestly" was necessary to ensure that public policy exceptions would be interpreted restrictively and paragraph 1 would be invoked only in exceptional circumstances concerning matters of fundamental importance for the forum State. It was also noted that the notion "manifestly contrary" was typically used in modern international texts, such as the UNCITRAL Model Law on Cross-Border Insolvency (see art. 6).

40. The suggestion was also made that paragraph 1 should make it clear that the application of a provision of the applicable law and not the provision itself needed to be manifestly contrary to the public policy of the forum State. Furthermore, the suggestion was made that paragraph 2 should state explicitly what was implied, namely, that, with the exception of the rules referred to in paragraph 2, the mandatory law rules of the forum or another State that were applicable irrespective of the law otherwise applicable could not displace the priority rules of the law of the assignor's location (see A/CN.9/489/Add.1, para. 40). Subject to those changes, the Commission approved the substance of draft article 25 and referred it to the drafting group.

Article 26: Special proceeds rules

41. The text of draft article 26 as considered by the Commission was as follows:

> "1. If proceeds are received by the assignee, the assignee is entitled to retain those proceeds to the extent that the assignee's right in the assigned receivable had priority over the right

of a competing claimant in the assigned receivable.

"2. If proceeds are received by the assignor, the right of the assignee in those proceeds has priority over the right of a competing claimant in those proceeds to the same extent as the assignee's right had priority over the right in the assigned receivable of those claimants if:

"(a) The assignor has received the proceeds under instructions from the assignee to hold the proceeds for the benefit of the assignee; and

"(b) The proceeds are held by the assignor for the benefit of the assignee separately and are reasonably identifiable from the assets of the assignor, such as in the case of a separate deposit account containing only cash receipts from receivables assigned to the assignee."

42. The concern was expressed that draft article 26 would unduly interfere with currently existing national law that treated payment in cash differently from payment through other means and was not familiar with the notion of proceeds or tracing of assets. It was stated that, under such law, payments made to the assignor would be part of the assignor's assets and the assignee could not assert a property right in such payments. In order to address that concern, the suggestion was made that draft article 26 should be made subject to a reservation. That suggestion was objected to. It was widely felt that draft article 26 introduced a special rule applicable only where parties chose to structure their transactions in a certain way so as to take advantage of the protection afforded by draft article 26. It was stated that such a rule, which was not unlike special national legislation, could benefit parties to securitization or confidential invoice discounting transactions, which were common practice all over the world and on the basis of which parties were able to obtain more credit and at a more affordable cost. It was also observed that drafting a rule so as to treat cash differently from other proceeds presupposed that a clear distinction could be drawn between cash and, for example, cash in deposit or securities accounts and negotiable instruments or securities, which was not easy in today's economy.

43. It was noted that, in the case of a conflict of priority between a securities intermediary with a right in securities as original collateral and an assignee under the draft Convention with a right in securities as proceeds, different results could be reached depending on whether draft article 26 or the place of the relevant intermediary approach (PRIMA) applied. It was also noted that the same problem could arise in the case of a priority conflict between a depository institution with a security right in or a right of set-off against a deposit account as original collateral and an assignee asserting a right in the deposit account as proceeds; and in the case of a transferee of a deposit or securities account as original collateral and an assignee with a right in such account as proceeds of an assigned receivable. In order to address that problem, it was suggested that language along the following lines should be added in draft article 26 as paragraph 3:

"Nothing in paragraph 2 of this article affects the priority of a right, not derived from the receivable, of a person holding a right created by agreement or of a person holding a right of set-off."

44. That suggestion received sufficient support. As an alternative, language along the following lines was proposed:

"Nothing in paragraph 2 affects the priority as against the assignee, under law outside this Convention, of a right, not derived from the receivable, of (i) a person holding a consensual security right in the proceeds, (ii) a consensual transferee of the proceeds for value, or (iii) a person holding a right of set-off against the proceeds."

45. In response to a question as to the difference between the two proposals, it was stated that, while the underlying policy of both proposals was the same, the second proposal was more precise. As a matter of drafting, the suggestion was also made that in paragraph 2 (b) indicative reference should be made to securities and securities accounts. Subject to that change in paragraph 2 (b) and to including in draft article 26 a new paragraph along the lines of the proposals mentioned above, the Commission approved the substance of draft article 26 and referred it to the drafting group (the Commission, however, did not consider the question of including language along the lines of draft article 24, paragraph 1 (a) (ii), in draft article 26).

Article 27: Subordination

46. The text of draft article 27 as considered by the Commission was as follows:

> "An assignee entitled to priority may at any time subordinate its priority unilaterally or by agreement in favour of any existing or future assignees."

47. The Commission approved the substance of draft article 27 unchanged and referred it to the drafting group.

Chapter V
Autonomous conflict-of-laws rules

Article 28: Application of chapter V

48. The text of draft article 28 as considered by the Commission was as follows:

> "The provisions of this chapter apply to matters that are:
>
> "(a) Within the scope of this Convention as provided in article 1, paragraph 4; and
>
> "(b) Otherwise within the scope of this Convention but not settled elsewhere in it."

49. The Commission approved the substance of draft article 28 unchanged and referred it to the drafting group.

Article 29: Law applicable to the mutual rights and obligations of the assignor and the assignee

50. The text of draft article 29 as considered by the Commission was as follows:

> "1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are governed by the law chosen by them.
>
> "2. In the absence of a choice of law by the assignor and the assignee, their mutual rights and obligations arising from their agreement are governed by the law of the State with which the contract of assignment is most closely connected."

51. The Commission approved the substance of draft article 29 unchanged and referred it to the drafting group. The Commission took note of a proposal to include in chapter V a provision on form and deferred its discussion until it had considered draft article 8 (see paras. 163 and 164).

Article 30: Law applicable to the rights and obligations of the assignee and the debtor

52. The text of draft article 30 as considered by the Commission was as follows:

> "The law governing the original contract determines the effectiveness of contractual limitations on assignment as between the assignee and the debtor, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and any question whether the debtor's obligations have been discharged."

53. The Commission approved the substance of draft article 30 unchanged and referred it to the drafting group.

Article 31: Law applicable to competing rights of other parties

54. The text of draft article 31 as considered by the Commission was as follows:

> "1. With the exception of matters that are settled elsewhere in this Convention and subject to articles 25 and 26:
>
> "(a) With respect to the right of a competing claimant, the law of the State in which the assignor is located governs:
>
> "(i) The characteristics and priority of the right of an assignee in the assigned receivable; and
>
> "(ii) The characteristics and priority of the right of the assignee in proceeds that are receivables whose assignment is governed by this Convention[;
>
> "(b) With respect to the right of a competing claimant, the characteristics and priority of the right of the assignee in proceeds described below are governed by:
>
> "(i) In the case of money or negotiable instruments not held in a bank account or through a securities intermediary, the law of

the State in which such money or instruments are located;

"(ii) In the case of investment securities held through a securities intermediary, the law of the State in which the securities intermediary is located;

"(iii) In the case of bank deposits, the law of the State in which the bank is located[; and

"(iv) In the case of receivables whose assignment is governed by this Convention, the law of the State in which the assignor is located];

"[(c) The existence and characteristics of the right of a competing claimant in proceeds described in paragraph 1 (b) of this article are governed by the law indicated in that paragraph]].

"2. In an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority status over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding paragraph 1 of this article."

55. It was agreed that paragraph 1 should be aligned with draft article 24. It was also agreed that the opening words of draft article 24, "with the exception of ... 26,", could be deleted on the understanding that draft article 28 was sufficient to deal with the hierarchy between draft article 31 and other provisions of the draft Convention outside chapter V and that the reference to draft article 25 was sufficiently covered by draft articles 31, paragraph 2, 32 and 33. In particular, as to the hierarchy between draft articles 24-26 and 31, it was widely felt that, if the assignor was not located in a Contracting State, draft articles 24-26 could not apply (see draft art. 28, subpara. (a)), while, if the assignor was located in a Contracting State, draft article 31 would not apply, since the matter covered therein would be settled in draft articles 24-26 (see draft art. 28, subpara. (b)). It was also agreed that paragraph 2 could be retained in its current formulation, since the matter addressed in the wording added to its equivalent draft article 25 (see para. 40) was sufficiently covered in draft article 32 (see, however, para. 196). Subject to the changes mentioned above, the Commission approved the substance of draft article 31 and referred it to the drafting group.

Article 32: Mandatory rules

56. The text of draft article 32 as considered by the Commission was as follows:

"1. Nothing in articles 29 and 30 restricts the application of the rules of the law of the forum State in a situation where they are mandatory, irrespective of the law otherwise applicable.

"2. Nothing in articles 29 and 30 restricts the application of the mandatory rules of the law of another State with which the matters settled in those articles have a close connection if and in so far as, under the law of that other State, those rules must be applied irrespective of the law otherwise applicable."

57. The Commission approved the substance of draft article 32 unchanged and referred it to the drafting group.

Article 33: Public policy

58. The text of draft article 33 as considered by the Commission was as follows:

"With regard to matters settled in this chapter, the application of a provision of the law specified in this chapter may be refused by a court or other competent authority only if that provision is manifestly contrary to the public policy of the forum State."

59. Subject to the same changes made to draft article 25, paragraph 1 (see para. 40), the Commission approved the substance of draft article 33 and referred it to the drafting group.

Chapter VI
Final provisions

Article 34: Depositary

60. The text of draft article 34 as considered by the Commission was as follows:

"The Secretary-General of the United Nations is the depositary of this Convention."

61. The Commission approved the substance of draft article 34 unchanged and referred it to the drafting group.

Article 35: Signature, ratification, acceptance, approval, accession

62. The text of draft article 35 as considered by the Commission was as follows:

> "1. This Convention is open for signature by all States at the Headquarters of the United Nations in New York, until [...].
>
> "2. This Convention is subject to ratification, acceptance or approval by the signatory States.
>
> "3. This Convention is open to accession by all States that are not signatory States as from the date it is open for signature.
>
> "4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations."

63. The Commission approved the substance of draft article 35 unchanged and referred it to the drafting group.

Article 36: Application to territorial units

64. The text of draft article 36 as considered by the Commission was as follows:

> "1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at any time, declare that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.
>
> "2. Such declarations are to state expressly the territorial units to which this Convention extends.
>
> "3. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the assignor or the debtor is located in a territorial unit to which this Convention does not extend, this location is considered not to be in a Contracting State.
>
> "4. If a State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State."

65. A number of concerns were expressed with respect to draft article 36. One concern was that paragraph 1 might introduce some uncertainty in that it allowed States to make a declaration "at any time". In order to address that concern, it was suggested that paragraph 1 be revised to provide that declarations should be made at the time of signature, ratification, acceptance, approval or accession. It was widely felt, however, that the flexibility provided to States in paragraph 1 as to the time a declaration could be made was common practice in international conventions (including, for example, the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (General Assembly resolution 50/48, annex)) and did not raise any problems.

66. Another concern was that the term "territorial unit" might not fully encompass what was reflected by the French term "collectivité territoriale" or by the term "jurisdiction". It was generally agreed, however, that the term "territorial unit" was sufficiently broad for that purpose, a matter that could be usefully clarified in the commentary on the draft Convention. It was stated in particular that the words in paragraph 1 qualifying the term "territorial unit" by reference to a different "system of law" were sufficiently general to ensure that different territorially defined jurisdictions would be covered. It was also observed that federal state clauses along the lines of draft article 36 were normally included in international conventions and the application of such clauses had not raised any problems. Yet another concern was that paragraph 3 might create uncertainty as to the application of the draft Convention and should be deleted. That suggestion was objected to. It was stated that, without a rule along the lines of paragraph 3, federal States that had no right to bind territorial units would not be able to adopt international conventions. After discussion, the Commission approved the substance of draft article 36 unchanged and referred it to the drafting group (for a later addition to draft art. 36, see para. 187).

Article 37: Applicable law in territorial units

67. The text of draft article 37 as considered by the Commission was as follows:

"[If a State has two or more territorial units whose law may govern a matter referred to in chapters IV and V of this Convention, a reference in those chapters to the law of a State in which a person or property is located means the law applicable in the territorial unit in which the person or property is located, including rules that render applicable the law of another territorial unit of that State. Such a State may specify by declaration at any time how it will implement this article.]"

68. The suggestion was made that language along the following lines should be substituted for draft article 37:

"If a State has two or more territorial units, the location of a person within that State shall be the territorial unit in which the central administration of the person is exercised or, if the person has no place of business, its habitual residence, unless that State specifies by declaration other rules for determining the location of a person within that State."

69. The Commission took note of the proposed text and, in order to give delegates the opportunity to study it, decided to defer discussion to a later point in time (see paras. 187 and 188).

Article 38: Conflicts with other international agreements

70. The text of draft article 38 as considered by the Commission was as follows:

"1. This Convention does not prevail over any international agreement that has already been or may be entered into and that contains provisions concerning the matters governed by this Convention, provided that the assignor is located at the time of the conclusion of the contract of assignment in a State party to such agreement or, with respect to the provisions of this Convention that deal with the rights and obligations of the debtor, at the time of the conclusion of the original contract, the debtor is located in a State party to such agreement or the law governing the original contract is the law of a State party to such agreement.

"2. Notwithstanding paragraph 1 of this article, this Convention prevails over the Unidroit Convention on International Factoring ("the Ottawa Convention"). If, at the time of the conclusion of the original contract, the debtor is located in a State party to the Ottawa Convention or the law governing the original contract is the law of a State party to the Ottawa Convention and that State is not a party to this Convention, nothing in this Convention precludes the application of the Ottawa Convention with respect to the rights and obligations of the debtor."

71. The concern was expressed that, in referring to "matters" governed by two international agreements, paragraph 1 might not be sufficiently clear. In order to address that concern, the suggestion was made that the words "concerning the matters" should be replaced with the words "specifically governing transactions otherwise". It was stated that the suggested wording would ensure that the draft Unidroit Convention on International Interests in Mobile Equipment ("the draft Unidroit Convention") would prevail only where it was specifically applicable to a transaction. Some concern was expressed as to the impact of that change on the draft Unidroit Convention. However, the Commission approved that change on the understanding that the matter might need to be revisited in the context of later discussions on the relationship between the draft Convention and the draft Unidroit Convention (see paras. 190-194).

72. The concern was also expressed that the second sentence of paragraph 2 might not achieve its purpose of ensuring that, if the draft Convention did not apply to the rights and obligations of a debtor, it would not preclude the application of the Ottawa Convention with respect to the rights and obligations of that debtor. In order to address that concern, the suggestion was made that that sentence should be replaced by language along the following lines:

"To the extent that this Convention does not apply to the rights and obligations of a debtor, it does not preclude the application of the Ottawa Convention with respect to the rights and obligations of that debtor."

There was sufficient support for that suggestion.

73. In the discussion, the suggestion was made that the commentary should state that various regulations and directives of regional organizations should be treated as international agreements for the purpose of

draft article 38. That suggestion was objected to. It was stated that such an approach would risk undermining the effectiveness of the international legislative process in general and the draft Convention in particular. It was also observed that, for that reason, obligations between members to various regional organizations should not interfere with obligations undertaken in multilateral legislative texts. In addition, it was pointed out that the purpose of the commentary was not to address a matter that, in any case, would have to be left to the courts. Furthermore, it was said that, in view of the large number of regional regulations or directives, reviewing all those texts would be an impossible task.

74. Subject to the changes referred to above (see paras. 71 and 72) and to its further deliberations on the relationship between the draft Convention and the draft Unidroit Convention (see paras. 190-194), the Commission approved the substance of draft article 38 and referred it to the drafting group.

Article 39: Declaration on application of chapter V

75. The text of draft article 39 as considered by the Commission was as follows:

> "A State may declare at any time that it will not be bound by chapter V."

76. The Commission approved the substance of draft article 39 unchanged and referred it to the drafting group.

Article 40: Limitations relating to Governments and other public entities

77. The text of draft article 40 as considered by the Commission was as follows:

> "A State may declare at any time that it will not be bound or the extent to which it will not be bound by articles 11 and 12 if the debtor or any person granting a personal or property right securing payment of the assigned receivable is located in that State at the time of the conclusion of the original contract and is a Government, central or local, any subdivision thereof, or an entity constituted for a public purpose. If a State has made such a declaration, articles 11 and 12 do not affect the rights and obligations of that debtor or person. A State may list in a declaration the types of entity that are the subject of a declaration."

78. The Commission approved the substance of draft article 40 unchanged and referred it to the drafting group.

Article 41: Other exclusions

79. The text of draft article 41 as considered by the Commission was as follows:

> "[1. A State may declare at any time that it will not apply this Convention to types of assignment or to the assignment of categories of receivables listed in a declaration. In such a case, this Convention does not apply to such types of assignment or to the assignment of such categories of receivables if the assignor is located at the time of the conclusion of the contract of assignment in such a State or, with respect to the provisions of this Convention that deal with the rights and obligations of the debtor, at the time of the conclusion of the original contract, the debtor is located in such a State or the law governing the original contract is the law of such a State.
>
> "2. After a declaration under paragraph 1 of this article takes effect:
>
> "(a) This Convention does not apply to such types of assignment or to the assignment of such categories of receivables if the assignor is located at the time of the conclusion of the contract of assignment in such a State; and
>
> "(b) The provisions of this Convention that affect the rights and obligations of the debtor do not apply if, at the time of the conclusion of the original contract, the debtor is located in such a State or the law governing the receivable is the law of such a State.]"

80. It was noted that both draft article 41, which set forth the effect of a declaration, and draft article 4, paragraph 4, which permitted a State to make such a declaration, appeared within square brackets, since the Working Group had not been able to reach agreement on those provisions.

81. Views that had been expressed at the last session of the Working Group both in favour and against the retention of draft article 41 were reiterated (see A/CN.9/486, paras. 115-118). On the one hand, it was argued that draft article 41 should be retained to provide the necessary flexibility for States to adjust the

scope of the draft Convention to their needs by excluding present practices other than those excluded in draft article 4 and future practices for which the draft Convention might not be suitable and which could not be predicted at the present time. It was underscored in particular that, even if draft article 4 were to cover fully all present practices that should be excluded, draft article 41 would still be needed so as to provide flexibility with respect to future practices. The example of dematerialized securities was given to emphasize the need for such flexibility with respect to new and rapidly developing practices. It was stated that such an approach would increase the acceptability of the draft Convention to States. It was also observed that the declaration mechanism was sufficiently transparent and would not create problems in practice. The Commission was urged, however, to try to simplify draft article 41. The view was also expressed that, while flexibility was welcome, it should be reflected in the draft Convention in a balanced way. In order to achieve that result, it was suggested that the draft Convention should allow States to utilize the declaration mechanism not only to exclude but also to include further practices. In response, it was stated that that suggestion could also be considered on the understanding that it would relate to practices for which the draft Convention would be suitable. Non-contractual receivables were mentioned as an example of receivables for the assignment of which the draft Convention would not be suitable.

82. On the other hand, it was argued that an approach based on exclusions by declaration would risk undermining the certainty and uniformity achieved by the draft Convention. It was pointed out that, if States were allowed to exclude any practice they wished, the scope of the draft Convention could differ from State to State, and parties would have to identify and interpret the relevant declarations, which might not always be easy. It was also observed that the revision mechanism provided in draft article 47 was sufficient to meet the needs of future practices. In addition, it was stated that, in view of the fact that such declarations would exclude the application of the draft Convention, they would constitute reservations subject to reciprocity, a result that could complicate the application of the draft Convention. Furthermore, it was pointed out that the advantage of creating an international uniform regime was the necessary counterweight for States that would have to change their own law to adopt the draft Convention. If that advantage was lost or minimized, those States might be reluctant to adopt the draft Convention. Moreover, it was emphasized that an open-ended authorization for exclusions could inadvertently result in States excluding assignments of trade receivables or assignments of receivables arising from contracts that contained an anti-assignment clause. It was pointed out that the possibility for such exclusions would create uncertainty, since financiers of trade receivables would virtually have to look over their shoulders for declarations by States. Such a result, it was said, could significantly reduce the usefulness of the draft Convention. In order to avoid such a deleterious result, it was suggested that, at least, draft article 41 should make it clear that practices relating to the assignment of trade receivables could not be excluded by declaration.

83. The Commission generally recognized that draft article 41 might need to describe or list the practices that could be excluded by declaration. It was also widely felt that the content of such a list could not be determined before finalization of draft article 4. The Commission, therefore, decided to defer further discussion on draft article 41 until it had completed its consideration of draft article 4 (see paras. 141-146). A note of caution was struck, however, that discussion should not be reopened with respect to draft article 4, since the Commission had approved that provision at its thirty-third session.

Article 42: Application of the annex

84. The text of draft article 42 as considered by the Commission was as follows:

> "1. A State may at any time declare that it will be bound by:
>
> "(a) The priority rules set forth in section I of the annex and will participate in the international registration system established pursuant to section II of the annex;
>
> "(b) The priority rules set forth in section I of the annex and will effectuate such rules by use of a registration system that fulfils the purposes of such rules, in which case, for the purposes of section I of the annex, registration pursuant to such a system has the same effect as registration pursuant to section II of the annex;

"(c) The priority rules set forth in section III of the annex;

"(d) The priority rules set forth in section IV of the annex; or

"(e) The priority rules set forth in articles 7 and 8 of the annex.

"2. For the purposes of article 24:

"(a) The law of a State that has made a declaration pursuant to paragraph 1 (a) or (b) of this article is the set of rules set forth in section I of the annex;

"(b) The law of a State that has made a declaration pursuant to paragraph 1 (c) of this article is the set of rules set forth in section III of the annex;

"(c) The law of a State that has made a declaration pursuant to paragraph 1 (d) of this article is the set of rules set forth in section IV of the annex; and

"(d) The law of a State that has made a declaration pursuant to paragraph 1 (e) of this article is the set of rules set forth in articles 7 and 8 of the annex.

"3. A State that has made a declaration pursuant to paragraph 1 of this article may establish rules pursuant to which assignments made before the declaration takes effect become subject to those rules within a reasonable time.

"4. A State that has not made a declaration pursuant to paragraph 1 of this article may, in accordance with priority rules in force in that State, utilize the registration system established pursuant to section II of the annex.

"5. At the time a State makes a declaration pursuant to paragraph 1 of this article or thereafter, it may declare that it will not apply the priority rules chosen under paragraph 1 of this article to certain types of assignment or to the assignment of certain categories of receivables."

85. A number of suggestions were made. One suggestion was that, in order to clarify the relationship between paragraphs 2 and 5, language along the following lines should be added at the end of subparagraphs (a)-(d) of paragraph 2: "as effected by any declaration made pursuant to paragraph 5 of this article". Another suggestion was that States should be allowed to adopt the provisions of the annex with modifications to be specified in a declaration. Language along the following lines was proposed for addition at the end of paragraph 5: "or that it will apply those priority provisions with modifications specified in that declaration". Subject to those changes, the Commission approved the substance of draft article 42 and referred it to the drafting group.

Article 43: Effect of declaration

86. The text of draft article 43 as considered by the Commission was as follows:

"1. Declarations made under articles 36, paragraph 1, 37 or 39 to 42 at the time of signature are subject to confirmation upon ratification, acceptance or approval.

"2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

"3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

"4. A State that makes a declaration under articles 36, paragraph 1, 37 or 39 to 42 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

"5. In the case of a declaration under articles 36, paragraph 1, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become applicable:

"(a) Except as provided in paragraph 5 (b) of this article, that rule is applicable only to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a);

"(b) A rule that deals with the rights and obligations of the debtor applies only in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

"6. In the case of a declaration under articles 36, paragraph 1, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become inapplicable:

"(a) Except as provided in paragraph 6 (b) of this article, that rule is inapplicable to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a);

"(b) A rule that deals with the rights and obligations of the debtor is inapplicable in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

"7. If a rule rendered applicable or inapplicable as a result of a declaration or withdrawal referred to in paragraph 5 or 6 of this article is relevant to the determination of priority with respect to a receivable for which the contract of assignment is concluded before such declaration or withdrawal takes effect or with respect to its proceeds, the right of the assignee has priority over the right of a competing claimant to the extent that, under the law that would determine priority before such declaration or withdrawal takes effect, the right of the assignee would have priority."

87. The Commission approved the substance of draft article 43 unchanged and referred it to the drafting group.

Article 44: Reservations

88. The text of draft article 44 as considered by the Commission was as follows:

> "No reservations are permitted except those expressly authorized in this Convention."

89. It was suggested that the commentary should clarify the application of draft article 44 by reference to two possible drafting changes (i.e. adding the words "or declarations" after the word "reservations" or deleting the words after the word "permitted"). The Commission approved the substance of draft article 44 unchanged and referred it to the drafting group.

Article 45: Entry into force

90. The text of draft article 45 as considered by the Commission was as follows:

> "1. This Convention enters into force on the first day of the month following the expiration of six months from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession with the depositary.
>
> "2. For each State that becomes a Contracting State to this Convention after the date of deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the appropriate instrument on behalf of that State.
>
> "3. This Convention applies only to assignments if the contract of assignment is concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1 (a), provided that the provisions of this Convention that deal with the rights and obligations of the debtor apply only to assignments of receivables arising from original contracts concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 3.

"4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1 (a), the right of the assignee has priority over the right of a competing claimant with respect to the receivable and its proceeds to the extent that, under the law that would determine priority in the absence of this Convention, the right of the assignee would have priority."

91. Subject to the deletion of the word "proceeds" in paragraph 4, which was the result of the deletion of the proceeds rules in draft article 24 (see para. 37), the Commission approved the substance of draft article 45 and referred it to the drafting group.

Article 46: Denunciation

92. The text of draft article 46 as considered by the Commission was as follows:

"1. A Contracting State may denounce this Convention at any time by written notification addressed to the depositary.

"2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

"3. This Convention remains applicable to assignments if the contract of assignment is concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a), provided that the provisions of this Convention that deal with the rights and obligations of the debtor remain applicable only to assignments of receivables arising from original contracts concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

"4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a), the right of the assignee has priority over the right of a competing claimant with respect to the receivable and its proceeds to the extent that, under the law that would determine priority under this Convention, the right of the assignee would have priority."

93. Subject to the deletion of the term "proceeds" in paragraph 4, which was the result of the deletion of the proceeds rules in draft article 24 (see para. 37), the Commission approved the substance of draft article 46 and referred it to the drafting group.

Article 47: Revision and amendment

94. The text of draft article 47 as considered by the Commission was as follows:

"1. At the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.

"2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended."

95. In view of the suggestion that the revision mechanism provided in draft article 47 might be used in adjusting the draft Convention to meet the needs of future practices (see para. 82), the Commission postponed discussion of draft article 47 until it had completed its discussion on draft articles 4, paragraph 4, and 41 (see para. 146).

Annex to the draft Convention

Section I
Priority rules based on registration

Article 1: Priority among several assignees

96. The text of draft article 1 of the annex as considered by the Commission was as follows:

"As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable and its proceeds is determined by the order in which data about the assignment are registered

under section II of this annex, regardless of the time of transfer of the receivable. If no such data are registered, priority is determined by the order of the conclusion of the respective contracts of assignment."

97. Subject to the deletion of the reference to proceeds (see para. 37), the Commission approved the substance of draft article 1 of the annex and referred it to the drafting group.

Article 2: Priority between the assignee and the insolvency administrator or creditors of the assignor

98. The text of draft article 2 of the annex as considered by the Commission was as follows:

"The right of an assignee in an assigned receivable and its proceeds has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable or its proceeds by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned, and data about the assignment were registered under section II of this annex, before the commencement of such insolvency proceeding, attachment, judicial act or similar act."

99. Subject to the deletion of the reference to proceeds (see para. 37), the Commission approved the substance of draft article 2 of the annex and referred it to the drafting group.

Section II
Registration

Article 3: Establishment of a registration system

100. The text of draft article 2 of the annex as considered by the Commission was as follows:

"A registration system will be established for the registration of data about assignments, even if the relevant assignment or receivable is not international, pursuant to the regulations to be promulgated by the registrar and the supervising authority. Regulations promulgated by the registrar and the supervising authority under this annex shall be consistent with this annex. The regulations will prescribe in detail the manner in which the registration system will operate, as well as the procedure for resolving disputes relating to that operation."

101. The concern was expressed that draft article 3 of the annex gave significant responsibilities to the supervising authority and the registrar without specifying the method of their appointment. In order to address that concern, a number of suggestions were made. One suggestion was that draft article 3 of the annex should be reformulated to deal with the matter in more general terms. That suggestion did not receive sufficient support. Another suggestion was that the method of designating the supervising authority and the registrar should be expressly settled in the draft Convention. Language along the following lines was proposed (see A/CN.9/491, para. 26):

"At the request of not less than one third of the [Contracting] [Signatory] States to this Convention, the depositary shall convene a conference of the [Contracting] [Signatory] States for designating the supervising authority and the first registrar, and for preparing the first regulations and for revising or amending them."

102. There was sufficient support in the Commission for that proposal. It was agreed that both Contracting and Signatory States should be allowed to request and participate in a conference. After discussion, the Commission approved the substance of draft article 3 of the annex, as well as of the proposed text mentioned above (deleting the brackets), and referred both provisions to the drafting group.

Article 4: Registration

103. The text of draft article 4 of the annex as considered by the Commission was as follows:

"1. Any person may register data with regard to an assignment at the registry in accordance with this annex and the regulations. As provided in the regulations, the data registered shall be the identification of the assignor and the assignee and a brief description of the assigned receivables.

"2. A single registration may cover one or more assignments by the assignor to the assignee of one or more existing or future receivables, irrespective of whether the receivables exist at the time of registration.

"3. A registration may be made in advance of the assignment to which it relates. The regulations will establish the procedure for the cancellation of a registration in the event that the assignment is not made.

"4. Registration or its amendment is effective from the time when the data set forth in paragraph 1 of this article are available to searchers. The registering party may specify, from options set forth in the regulations, a period of effectiveness for the registration. In the absence of such a specification, a registration is effective for a period of five years.

"5. Regulations will specify the manner in which registration may be renewed, amended or cancelled and regulate such other matters as are necessary for the operation of the registration system.

"6. Any defect, irregularity, omission or error with regard to the identification of the assignor that would result in data registered not being found upon a search based on a proper identification of the assignor renders the registration ineffective."

104. The Commission approved the substance of draft article 4 of the annex unchanged and referred it to the drafting group.

Article 5: Registry searches

105. The text of draft article 5 of the annex as considered by the Commission was as follows:

"1. Any person may search the records of the registry according to identification of the assignor, as set forth in the regulations, and obtain a search result in writing.

"2. A search result in writing that purports to be issued by the registry is admissible as evidence and is, in the absence of evidence to the contrary, proof of the registration of the data to which the search relates, including the date and hour of registration."

106. The Commission approved the substance of draft article 5 of the annex unchanged and referred it to the drafting group.

Section III
Priority rules based on the time of the contract of assignment

Article 6: Priority among several assignees

107. The text of draft article 6 of the annex as considered by the Commission was as follows:

"As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable and its proceeds is determined by the order of the conclusion of the contract of assignment."

108. Subject to the deletion of the reference to proceeds (see para. 37), the Commission approved the substance of draft article 6 of the annex and referred it to the drafting group.

Article 7: Priority between the assignee and the insolvency administrator or creditors of the assignor

109. The text of draft article 7 of the annex as considered by the Commission was as follows:

"The right of an assignee in an assigned receivable and its proceeds has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable or its proceeds by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned before the commencement of such insolvency proceeding, attachment, judicial act or similar act."

110. Subject to the deletion of the reference to proceeds (see para. 37), the Commission approved the substance of draft article 7 of the annex and referred it to the drafting group.

Additional provision in section III

111. In order to address the issue of proof of the time of conclusion of the contract of assignment, wording along the following lines was proposed:

"The time of conclusion of a contract of assignment in respect of articles 6 and 7 may be proved by any means."

There was broad support in the Commission for the proposed text. After discussion, the Commission

approved the substance of the proposal and referred it to the drafting group.

Section IV
Priority rules based on the time of notification of assignment

Article 8: Priority among several assignees

112. The text of draft article 8 of the annex as considered by the Commission was as follows:

> "As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable and its proceeds is determined by the order in which notification of the assignment is effected."

113. The concern was expressed that a priority system based on notification might not be as efficient as it should be for it to be recommended to States. In response, it was pointed out that such a system existed and was functioning well in many countries. It was also stated that the purpose of the annex was not to rate different priority systems but to present them in a balanced and comprehensive way.

114. In order to better reflect the relevant rule, it was suggested that draft article 8 of the annex should be supplemented by language along the following lines:

> "However, an assignee with knowledge of a prior assignment at the time of its assignment may not obtain priority over the prior assignment."

It was also suggested that, for the same reason, reference should be made to the time notification of the assignment was received by the debtor rather than to the time when notification of the assignment was effected. Subject to those modifications and to the deletion of the reference to proceeds (see para. 37), the Commission approved the substance of draft article 8 of the annex and referred it to the drafting group.

Article 9: Priority between the assignee and the insolvency administrator or creditors of the assignor

115. The text of draft article 9 of the annex as considered by the Commission was as follows:

> "The right of an assignee in an assigned receivable and its proceeds has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable or its proceeds by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned and notification was effected before the commencement of such insolvency proceeding, attachment, judicial act or similar act."

116. Subject to the deletion of the reference to proceeds (see para. 37), the Commission approved the substance of draft article 9 of the annex and referred it to the drafting group.

Title and preamble

117. The text of the title and the preamble of the draft Convention as considered by the Commission was as follows:

"Draft Convention on Assignment of Receivables in International Trade

"Preamble

"*The Contracting States*,

"*Reaffirming* their conviction that international trade on the basis of equality and mutual benefit is an important element in the promotion of friendly relations among States,

"*Considering* that problems created by uncertainties as to the content and the choice of legal regime applicable to the assignment of receivables constitute an obstacle to international trade,

"*Desiring* to establish principles and to adopt rules relating to the assignment of receivables that would create certainty and transparency and promote the modernization of the law relating to assignments of receivables, while protecting existing assignment practices and facilitating the development of new practices,

"*Desiring also* to ensure adequate protection of the interests of debtors in assignments of receivables,

"*Being of the opinion* that the adoption of uniform rules governing the assignment of

receivables would promote the availability of capital and credit at more affordable rates and thus facilitate the development of international trade,

"*Have agreed as follows*:"

118. The Commission agreed to include the definite article "the" before the word "assignment" in the title of the draft Convention. Subject to that change, the Commission approved the substance of the title and the preamble of the draft Convention and referred them to the drafting group.

Chapter I
Scope of application

Article 1: Scope of application

119. The text of draft article 1 as considered by the Commission was as follows:

"1. This Convention applies to:

"(a) Assignments of international receivables and to international assignments of receivables as defined in this chapter, if, at the time of the conclusion of the contract of assignment, the assignor is located in a Contracting State; and

"(b) Subsequent assignments, provided that any prior assignment is governed by this Convention.

"2. This Convention applies to subsequent assignments that satisfy the criteria set forth in paragraph 1 (a) of this article, even if it did not apply to any prior assignment of the same receivable.

"3. This Convention does not affect the rights and obligations of the debtor unless, at the time of the conclusion of the original contract, the debtor is located in a Contracting State or the law governing the original contract is the law of a Contracting State.

"4. The provisions of chapter V apply to assignments of international receivables and to international assignments of receivables as defined in this chapter independently of paragraphs 1 and 2 of this article. However, those provisions do not apply if a State makes a declaration under article 39.

"5. The provisions of the annex to this Convention apply as provided in article 42."

120. The Commission approved the substance of draft article 1 unchanged and referred it to the drafting group (for a change decided later, see para. 196).

Article 2: Assignment of receivables

121. The text of draft article 2 as considered by the Commission was as follows:

"For the purposes of this Convention:

"(a) 'Assignment' means the transfer by agreement from one person ('assignor') to another person ('assignee') of all or part of or an undivided interest in the assignor's contractual right to payment of a monetary sum ('receivable') from a third person ('debtor'). The creation of rights in receivables as security for indebtedness or other obligation is deemed to be a transfer;

"(b) In the case of an assignment by the initial or any other assignee ('subsequent assignment'), the person who makes that assignment is the assignor and the person to whom that assignment is made is the assignee."

122. The Commission approved the substance of draft article 2 unchanged and referred it to the drafting group.

Article 3: Internationality

123. The text of draft article 3 as considered by the Commission was as follows:

"A receivable is international if, at the time of the conclusion of the original contract, the assignor and the debtor are located in different States. An assignment is international if, at the time of the conclusion of the contract of assignment, the assignor and the assignee are located in different States."

124. The Commission approved the substance of draft article 3 unchanged and referred it to the drafting group.

Article 4: Exclusions

125. The text of draft article 4 as considered by the Commission was as follows:

"1. This Convention does not apply to assignments made:

"(a) To an individual for his or her personal, family or household purposes;

"(b) By the delivery of a negotiable instrument, with an endorsement, if necessary;

"(c) As part of the sale or change in the ownership or legal status of the business out of which the assigned receivables arose.

"2. This Convention does not apply to assignments of receivables arising under or from:

"(a) Transactions on a regulated exchange;

"(b) Financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions;

"(c) Bank deposits;

"(d) Inter-bank payment systems, inter-bank payment agreements or investment securities settlement systems;

"(e) A letter of credit or independent guarantee;

"(f) The sale, loan or holding of or agreement to repurchase investment securities.

"3. This Convention does not:

"(a) Affect whether a property right in real estate confers a right in a receivable related to that real estate or determine the priority of such a right in the receivable with respect to the competing right of an assignee of the receivable; or

"(b) Make lawful the acquisition of property rights in real estate not permitted under the law of the State where the real estate is located.

"[4. This Convention does not apply to assignments listed in a declaration made under article 41 by the State in which the assignor is located, or with respect to the provisions of this Convention that deal with the rights and obligations of the debtor, by the State in which the debtor is located or the State whose law is the law governing the original contract.]"

Paragraph 1

126. It was noted that the Working Group had referred to the Commission the question whether transfers of negotiable instruments by delivery without a necessary endorsement or by a book entry should be excluded or be made subject to a priority rule other than that in draft article 24. In order to address that question, it was suggested that paragraph 1 (b) be replaced with wording along the following lines: "This Convention does not affect the rights and obligations of any person under negotiable instrument law" (see A/CN.9/491, paras. 27 and 28).

127. Support was expressed for that suggestion. It was stated that it appropriately focused on the transfer of an instrument by negotiation rather than on the type of the instrument. It was also observed that it was consistent with the policy of paragraph 1 (b), as approved by the Commission at its thirty-third session, to preserve the rights and obligations of parties obtaining a right by negotiation, without excluding the assignment of the underlying contractual receivable, if such assignment was permitted under law applicable outside the draft Convention (see A/CN.9/491, para. 28, and A/CN.9/489, para. 45).

128. However, a number of concerns were expressed. One concern was that the meaning of the term "negotiable instrument law" was not clear. In order to address that concern, the suggestion was made that reference should be made to "the law governing negotiable instruments". It was also suggested that the commentary could explain that the term "negotiable instrument" encompassed bills of exchange, promissory notes and cheques. Another concern was that the words "does not affect", the exact meaning of which was not sufficiently clear, appeared to change the effect of paragraph 1 (b). In response, it was noted that the words were used in a number of provisions of the draft Convention (e.g. draft art. 4, para. 3 (a)) and were intended to ensure that, while a particular type of assignment was covered, rights of certain parties (e.g. priority rights) under law applicable outside the draft Convention would not be affected.

129. Yet another concern was that the proposed wording did not cover the rights and obligations of a person acquiring rights in an instrument by mere

delivery. In order to address that concern, the suggestion was made that paragraph 1 (b) should be replaced by wording along the following lines: "This Convention does not affect the rights of an assignee in possession of an instrument under the law of the State in which the instrument was situated." While interest was expressed in the proposed text, a number of concerns were also expressed. One concern was that it inappropriately expanded the scope of paragraph 1 (b) to cover instruments that were transferred by means other than negotiation. Another concern was that, like the text proposed above (see para. 126), the newly proposed text changed the effect of paragraph 1 (b) in that it did not exclude the transfer of an instrument by negotiation. Another concern was that use of the term "assignee in possession of an instrument" might be confusing, since it was not meant to refer to an assignee as defined in draft article 2, paragraph 1.

130. The Commission expressed its willingness to replace paragraph 1 (b) with a text along the lines of the text mentioned in paragraph 126 above. However, it was reiterated that that text would not address the rights of a person in possession of an instrument under law other than negotiable instrument law (e.g. pledge law); the rights of a person in an instrument that was not technically a negotiable instrument but was transferred by delivery; and the rights of a person in an electronic instrument transferable by book entry or control. In response, it was stated that there should be no exception for instruments other than negotiable instruments and, in effect, priority disputes between an assignee and a pledgee or another person in possession of an instrument should be referred to the law of the assignor's location. Otherwise, it was said, in view of the difficulty in drawing a clear distinction between negotiable and other instruments, the proposed exception could encompass even trade receivables. In an effort to bridge the gap between the differing views as to whether the exception in paragraph 1 (b) should encompass instruments transferable in a way similar to negotiation, the suggestion was made that wording along the following lines could be added to the text proposed in paragraph 126 above: "The same rule applies to transfers made in the same manner as negotiation". It was stated that that text would cover the pledge or delivery of a non-negotiable instrument, as well as the transfer of an electronic instrument. While some support was expressed for that text, it was stated that it created an exception in cases where no exception should be made.

131. After discussion, the Commission reiterated its support for the text referred to in paragraph 126 above and expressed its willingness to explore the possibility for an amendment along the lines of the text proposed in paragraph 129 above. Discussion focused on a revised text that was as follows:

> "Nothing in this Convention affects:
>
> "(a) The rights of a person in possession of a negotiable [or similarly transferable] instrument under the laws of the State in which the instrument is situated; and
>
> "(b) The obligations of a party to a negotiable [or similarly transferable] instrument."

132. It was stated that the effect of that provision would be to preserve the rights (e.g. priority rights) of an issuer or the holder of an instrument under the law of the State in which the instrument was located. While some support was expressed for that proposal, a number of concerns were also expressed. One concern was that the words "or similarly transferable" could inadvertently create an exception for instruments for which no such an exception should be established (e.g. documents evidencing financial leases). Another concern was that the reference to "possession" could cover even rights not derived from the instrument. In order to address those concerns, a number of suggestions were made, including the suggestions to refer to "instruments transferable by mere delivery or by delivery and endorsement" or to "instruments transferable by negotiation".

133. However, those suggestions too were objected to. It was widely felt that the text mentioned in paragraph 126 above would be preferable, slightly revised to read along the following lines: "This Convention does not affect the rights and obligations of a person under the law governing negotiable instruments". It was stated that "law governing negotiable instruments" was broader than "negotiable instrument law" and would include the law of pledge of negotiable instruments. Subject to the deletion of paragraph 1 (b) and the introduction of a new paragraph in draft article 4 along the lines of the text just mentioned, the Commission approved paragraph 1 and referred it to the drafting group.

Paragraph 2

134. It was stated that subparagraphs (a) and (b) appropriately excluded, inter alia, foreign exchange transactions. However, the concern was expressed that they might not be sufficient to exclude all foreign exchange transactions since such transactions could take place outside a regulated exchange or without being governed by a netting agreement. In order to address that concern, the suggestion was made that foreign exchange transactions should be specifically excluded from the scope of the draft Convention. That suggestion received broad support.

135. As to subparagraph (d), a number of concerns were expressed. One concern was that the reference to "investment securities" was too limiting, with the result that priority issues with respect to some types of securities might not be subject to PRIMA, in favour of which consensus was emerging, as the text being prepared by the Hague Conference on Private International Law indicated. It was stated that such a result could disrupt security markets and create an overlap with the text being prepared by the Hague Conference. In order to address that concern, experts from the Hague Conference suggested that the focus of the exclusion should be on the indirect holding pattern. In the same vein, it was suggested that the exclusion should be expanded to refer to "securities or other financial assets or instruments" to the extent held with an intermediary. There was sufficient support in the Commission for that suggestion. Support was also voiced in the Commission for the suggestion to supplement the reference to "settlement systems" by adding in subparagraph (d) a reference to "clearance systems".

136. It was also agreed that a reference to "securities and other financial assets or instruments held with an intermediary" should be added in subparagraph (f) as well. Furthermore, it was agreed that transfers of security rights in securities should also be excluded in subparagraph (f). Subject to those changes (see paras. 134-136), the Commission approved paragraph 2 and referred it to the drafting group.

Paragraph 3

137. With respect to subparagraph (a), a number of concerns were expressed. One concern was that subparagraph (a) did not resolve a question that raised great problems in some jurisdictions, namely, whether rental payments constituted personal rather than real property. In order to address that concern, it was suggested that subparagraph (a) be replaced with language along the following lines: "The Convention does not apply to the assignment of a receivable related to land that is situated in a State in which a property right in land confers a right to such a receivable." That suggestion was objected to. It was stated that, in view of the fact that in most jurisdictions a right in real property conferred a right in its "fruits", the result of that suggestion would be to exclude all land-related receivables, which would be a significant change in the policy underlying paragraph 3. In response, it was observed that the suggestion was not intended to change the policy of paragraph 3, which was to avoid undermining real estate markets. It was recognized, however, that the problem identified arose only in some jurisdictions and that those jurisdictions could make use of the declaration mechanism for an exclusion, which should be preserved.

138. Another concern was that, in its current formulation, paragraph 3 might not be sufficiently clear and even raise questions of interpretation. In order to avoid that result, the suggestion was made that it be replaced with language along the following lines: "Where an assignment of a receivable operates so as to confer an interest in land on an assignee, nothing in this Convention shall displace or override the application to that interest of the national law of the state in which the land is located." That suggestion too was objected to. It was stated that the element that triggered the application of subparagraph (a) was reversed. It was also observed that it was not clear which law would apply to a priority conflict between an assignee and the holder of an interest in real property extending to the receivables arising from the sale or lease of the real property. As a matter of drafting, it was suggested that the term "real estate" be replaced with the term "real property" or "land", on the understanding that both the soil and any building thereon should be covered. It was also suggested that in subparagraph (b) reference should be made to legal effectiveness rather than to lawfulness.

139. In a final effort to clarify the meaning of paragraph 3, while addressing the concerns expressed with regard to its proposed reformulation, language along the following lines was proposed:

"Nothing in this Convention:

"(a) Affects the application of the law of a State in which land is situated either:

"(i) To an interest in that land to the extent that under that law the assignment of a receivable confers such an interest; or

"(ii) To determine the priority of a right in a receivable to the extent that under that law an interest in the land confers such a right; or

"(b) Makes lawful the acquisition of an interest in land not permitted under the law of the State in which the land is situated."

140. Broad support was expressed in the Commission for that proposal. It was stated that the proposed text was in line with the policy of paragraph 3 to avoid excluding the assignment of land-related receivables from the scope of the draft Convention, while preserving certain rights. Under subparagraph (a), priority with respect to rents or mortgages would be subject to the law of the State in which the real property was located, while under subparagraph (b) the draft Convention would not override statutory prohibitions on the acquisition of interests in real property. After discussion, the Commission approved the proposed text, which was to replace current paragraph 3, and referred it to the drafting group. It was also agreed that the term "land" or "real property" could be used on the understanding that it included both the soil and any buildings on it, a matter that could be usefully clarified in the commentary.

Paragraph 4 and draft article 41

141. Recalling its earlier discussion of draft article 41 (see paras. 79-83), the Commission focused on practices that might need to be specifically excluded by declaration. In that connection, several practices were mentioned, including practices relating to capital markets, settlement systems between entities other than financial institutions, land-related receivables and receivables in the form of electronic instruments. While the arguments mentioned above (see paras. 81 and 82) in favour of and against draft articles 4, paragraph 4, and 41 were reiterated, it was felt that those provisions could be retained if they provided for specific and limited exclusions.

142. Language along the following lines was proposed to replace draft article 41:

"A State may declare at any time that it will not apply this Convention to the following types of assignments:

"(a) Assignments of receivables arising in transactions in securities or capital markets, in which case this Convention does not apply to assignments of such receivables if the assignor is located in such State;

"(b) Assignments of receivables arising from payment or clearance and settlement systems, in which case this Convention does not apply to assignments of such receivables if the rights of participants in such system are governed by the law of such State; and

"(c) Assignments of receivables arising from the use or occupancy of buildings or land situated in that State, in which case this Convention does not apply to assignments of such receivables if the land or buildings are situated in such State; and

"(d) Assignments of receivables evidenced by a writing that is transferred by book entry, control of electronic records, [or delivery], in which case this Convention does not apply to assignments of such receivables if (i) the debtor is located in such State, in the case of a receivable transferred by book entry, (ii) the person by whom control is maintained is located in such State, in the case of a receivable transferred by control of an electronic record, [or (iii) the writing is situated in such State, in the case of a writing is transferred by delivery]."

143. It was stated that, further to the Commission's decision to revise paragraph 3 (see para. 140), subparagraph (c), of the proposed wording would no longer be necessary. The Commission expressed its appreciation for the effort to prepare that proposal. However, a number of concerns were expressed. One concern was that the exclusions were formulated in such a broad way that that could inadvertently result in excluding the core subject of the draft Convention, namely the assignment of trade receivables. It was stated that such a result would risk reducing the impact of the draft Convention and virtually turning it into a model law with a scope that could differ from State to

State. It was also observed that, in particular, subparagraph (d) could have the unintended effect of excluding factoring of trade receivables evidenced by electronic records. It was also observed that the reference in subparagraph (a) to "capital markets" could have the same effect, since the term would cover all public markets in which capital was raised (including securitization of trade receivables). Another concern was that the proposed text could be misunderstood as a recommendation to exclude all practices listed, a result that could undermine the effectiveness of the draft Convention. Yet another concern was that the proposed text inappropriately limited the ability of States to exclude further practices and was not balanced in the sense that it did not permit States to also include further practices within the scope of the draft Convention. In response, it was stated that the prevailing view in the discussion was for specific exclusions and that the same specificity rule should apply to any possible inclusions that could be considered if a proposal was made.

144. In view of the difficulties identified with respect to the proposed text, the suggestion was made that draft article 41 should be deleted on the understanding that the revision mechanism foreseen in draft article 47 was sufficient to face the challenge posed by future developments. However, it was stated that, if retained, paragraph 1 should be revised to refer to "specific" exclusions "clearly described" in a declaration and a new paragraph 3 should be included to ensure that assignments of trade receivables could not be the subject of such a declaration. Support was expressed for that proposal. Another proposal to make the declaration subject to prior consultation with all signatory and contracting States was not supported, since it was felt that it would unduly restrict the ability of a State to make a declaration. It was agreed, however, that the commentary could refer to the possibility for consultation with States or the Secretariat. At the same time, a number of objections were raised to the proposed reformulation of draft article 41. One objection was that the proposed text failed to take into account that, if a State did not wish to apply the draft Convention to trade receivables, it would simply not adopt it. Another objection was that the proposed text failed to address concerns expressed with regard to certain practices relating to trade receivables that might need to be excluded in the future (e.g. receivables in electronic records). In order to address that point, language along the following lines was proposed as a new paragraph 4 in draft article 41:

> "Following consultations with all signatories and contracting States, a State may declare at any time that this Convention will not affect the rights of a transferee of receivables evidenced by writing whose rights are derived from the transfer to the transferee of the writing by book entry, control of electronic records or delivery and whose rights under the law of the State in which the writing is located or the book entry or control is maintained are superior to those of a person who is not a transferee of the writing by book entry, control of electronic records or delivery. The declaration shall describe the nature of the writing and the types of assignment or categories of receivables evidenced by the writing and the circumstances in which the rights of the transferee will not be affected by this Convention."

145. While the Commission expressed its appreciation for the proposal, it was widely felt that it failed to address the main concern expressed with regard to the previous proposal (see paras. 142 and 143), namely, that it was overly broad. It was also stated that the newly proposed text added to the level of complexity of the provision and raised new concerns. One concern was that, under the proposed text, it would not be enough for a party to look at the law of the State of the assignor's location to determine if a declaration had been made. Parties would be exposed to the risk of a declaration made by a State in which an instrument, about the existence of which parties might not even be aware, was located. Another concern was that it would not be clear whether a declaration would be binding on all States or only on the State in which a dispute arose, provided that it had made a declaration and the instrument at issue was located in that State. In response, it was stated that missing the opportunity to deal with transfers by book entry or control of electronic records and by delivery of paper instruments would be regrettable. It was also observed that practice would cope with custodians in the assignor's State and with other steps, but those steps would add to the cost of certain financing transactions.

146. After discussion, subject to the changes referred to at the beginning of paragraph 144 above, the Commission approved the substance of draft article 41

and referred it and paragraph 4 of draft article 4 to the drafting group. Recalling its decision to defer discussion on draft article 47 until it had considered draft articles 4, paragraph 4, and 41 (see para. 95), the Commission approved the substance of draft article 47 unchanged and referred it to the drafting group (for the discussion of a new paragraph in draft article 4 to deal with consumer protection issues, see paras. 185 and 186).

Article 5: Definitions and rules of interpretation

147. The text of draft article 5 as considered by the Commission was as follows:

"For the purposes of this Convention:

"(a) 'Original contract' means the contract between the assignor and the debtor from which the assigned receivable arises;

"(b) 'Existing receivable' means a receivable that arises upon or before the conclusion of the contract of assignment and 'future receivable' means a receivable that arises after the conclusion of the contract of assignment;

"(c) 'Writing' means any form of information that is accessible so as to be usable for subsequent reference. Where this Convention requires a writing to be signed, that requirement is met if, by generally accepted means or a procedure agreed to by the person whose signature is required, the writing identifies that person and indicates that person's approval of the information contained in the writing;

"(d) 'Notification of the assignment' means a communication in writing that reasonably identifies the assigned receivables and the assignee;

"(e) 'Insolvency administrator' means a person or body, including one appointed on an interim basis, authorized in an insolvency proceeding to administer the reorganization or liquidation of the assignor's assets or affairs;

"(f) 'Insolvency proceeding' means a collective judicial or administrative proceeding, including an interim proceeding, in which the assets and affairs of the assignor are subject to control or supervision by a court or other competent authority for the purpose of reorganization or liquidation;

"(g) 'Priority' means the right of a party in preference to another party;

"(h) A person is located in the State in which it has its place of business. If the assignor or the assignee has a place of business in more than one State, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one State, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person;

"(i) 'Law' means the law in force in a State other than its rules of private international law;

"(j) 'Proceeds' means whatever is received in respect of an assigned receivable, whether in total or partial payment or other satisfaction of the receivable. The term includes whatever is received in respect of proceeds. The term does not include returned goods;

"(k) 'Financial contract' means any spot, forward, future, option or swap transaction involving interest rates, commodities, currencies, equities, bonds, indices or any other financial instrument, any repurchase or securities lending transaction and any other transaction similar to any transaction referred to above entered into in financial markets and any combination of the transactions mentioned above;

"(l) 'Netting agreement' means an agreement that provides for one or more of the following:

"(i) The net settlement of payments due in the same currency on the same date whether by novation or otherwise;

"(ii) Upon the insolvency or other default by a party, the termination of all outstanding transactions at their replacement or fair market values, conversion of such sums into a single currency and netting into a single payment by one party to the other; or

"(iii) The set-off of amounts calculated as set forth in subparagraph (l) (ii) of this article under two or more netting agreements;

"(m) 'Competing claimant' means:

"(i) Another assignee of the same receivable from the same assignor, including a person who, by operation of law, claims a right in the assigned receivable as a result of its right in other property of the assignor, even if that receivable is not an international receivable and the assignment to that assignee is not an international assignment;

"(ii) A creditor of the assignor; or

"(iii) The insolvency administrator."

Subparagraph (g) ("Priority")

148. Recalling its earlier discussion of the definition of "priority" (see para. 37), the Commission considered a new version of subparagraph (g) that read as follows:

"(g) 'Priority' means the right of a person in preference to the right of a competing claimant and, to the extent relevant for such purpose, includes the determination whether the right is a property right or not and whether it is a security right for indebtedness or other obligation or not."

149. It was noted that a new paragraph had been added to draft article 26 to ensure that the draft Convention did not affect the priority of rights of persons other than those included in the definition of "competing claimant". It was, therefore, suggested that, for that provision to operate, reference should be made in subparagraph (g) to "a competing claimant *or other person*" (for a change to draft art. 5, subpara. (h), decided later, see para. 162).

Subparagraph (h) ("Location")

150. It was agreed that the definition of "location" in subparagraph (h) would operate well in the vast majority of cases. The view was expressed, however, that it might not be appropriate for banks and other financial institutions, at least to the extent that it would refer priority issues with respect to the dealings of a branch of a foreign bank in one State to the law of the central administration of the bank in another State. It was stated in particular that that result was problematic in the case of financing transactions in which central banks provided financing to branches of foreign banks taking receivables of those branches as security, as well as in transactions in which commercial banks bought loans from branches of foreign banks. In order to address that problem, it was suggested that branch offices of banks and possibly of other financial institutions should be treated as independent legal entities. While the concern was raised that such a rule would reduce the certainty achieved by subparagraph (h) and might negatively affect practices beyond those that it was intended to address, the Commission expressed its willingness to attempt to develop a rule to address the specific problem identified above. Language along the following lines was proposed for addition at the end of subparagraph (h): "If the assignor or the assignee is engaged in the business of banking by making loans and accepting deposits, a branch of that assignee or assignor is a separate person."

151. Support was expressed for that proposal. It was recalled that article 1, paragraph 3, of the UNCITRAL Model Law on International Credit Transfers contained a similar rule. It was stated that, if branches were treated as separate legal entities, priority issues with respect to their dealings would be subject to the law with the closest connection to the assignment transaction. It was also pointed out that such a rule would be appropriate since it would result in referring priority issues to the State in which the branch of a bank was deemed to be located for regulatory and taxation purposes.

152. In order to improve the rule proposed, a number of proposals were made. One proposal was that the proposed rule should be expanded to apply to other financial institutions or even to other commercial entities operating through a branch-based structure. That proposal was objected to on the ground that it could inappropriately expand the scope of the proposed rule and undermine the certainty achieved by subparagraph (h). Another proposal was that the new rule should apply solely to cases where the banking activity had been authorized. That proposal too was objected to on the ground that merely referring to the authorization to trigger the effect of the proposed rule would inadvertently result in its application to situations where no actual banking activity took place. It was also pointed out that it was not clear whether the authorization would refer to the head office or to the

branch (a matter that was said not to be clear even with respect to the actual banking activity). Yet another proposal was to avoid any reference to "making loans and accepting deposits", because some banks might not be authorized to engage in both activities. While there was support for that proposal, the concern was expressed that it might result in the rule applying to entities that were not banks. Yet another proposal was to limit the application of that rule to priority issues. There was no support for that proposal. Yet another proposal was that the reference to the "assignee" should be deleted, since the assignee's location was relevant neither for the applicability of the draft Convention nor for the purposes of priority. That proposal too was objected to on the ground that the location of the assignee was relevant for the internationality of a transaction and thus for the application of the draft Convention.

153. Beyond the concerns expressed with regard to the formulation of the proposed rule, a number of fundamental objections were raised. It was stated that the central administration rule contained in subparagraph (h) was appropriate in the vast majority of cases and should not be compromised by exceptions. In addition, it was pointed out that priority issues should be referred not to the law of the State where the branch of a bank was regulated or taxed but to that of the State in which the bank would be wound up, namely, the place of its central administration. Furthermore, it was observed that treating branches of banks as separate entities would create an artificial distinction that could cause confusion in practice. In particular in jurisdictions where registration was required in the place of central administration, such a rule could cause uncertainty as to how to obtain priority or even create a double registration requirement. It was also stated that such a rule could inadvertently apply to entities beyond those envisaged since there was no uniform understanding as to what a "bank" was. In that connection, it was observed that the definition of "bank" in the UNCITRAL Model Law on International Credit Transfers could not be used since it was structured around the subject of the Model Law, namely, payment orders.

Subparagraph (k) ("Financial contract")

154. The suggestion was made that collateral and credit support arrangements were part of financial contracts and should thus also be excluded. It was stated that such arrangements were documented under the same industry standard master agreements governing financial contracts. It was also observed that exclusion of collateral and credit support arrangements from the draft Convention would lead to further certainty and predictability with respect to set-off and netting provisions of the standard market arrangements pursuant to which those important risk-management arrangements operated. It was noted, however, that, at its thirty-third session, the Commission had agreed that collateral and credit support arrangements should be deleted from the definition of "financial contracts" that was before it. The reasons given by the Commission were that such arrangements did not fit into a definition of "financial contract" and, more importantly, that such an approach could inadvertently result in excluding an assignment of receivables to secure a bank loan.[5] The Commission confirmed that decision. It was widely felt that such exclusion could expand the scope of the excluded practices excessively. It was stated that it would be particularly inappropriate to exclude the assignment of receivables that secured rights arising under both financial and non-financial contracts.

Subparagraph (l) ("Netting")

155. The suggestion was made that it should be made clear that the definition of netting covered both bilateral and multilateral netting. Language along the following lines was proposed for insertion after the word "agreement": "between two or more parties". There was broad support in the Commission for that suggestion.

156. Subject to the changes referred to above (see paras. 149 and 154), the Commission approved the substance of draft article 5 and referred it to the drafting group.

Article 6: Party autonomy

157. The text of draft article 6 as considered by the Commission was as follows:

> "Subject to article 21, the assignor, the assignee and the debtor may derogate from or vary by agreement provisions of this Convention relating to their respective rights and obligations. Such an agreement does not affect the rights of any person who is not a party to the agreement."

158. The Commission approved the substance of draft article 6 unchanged and referred it to the drafting group.

Article 7: Principles of interpretation

159. The text of draft article 7 as considered by the Commission was as follows:

> "1. In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.
>
> "2. Questions concerning matters governed by this Convention that are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law."

160. The Commission approved the substance of draft article 7 unchanged and referred it to the drafting group.

Chapter III
Effects of assignment

Article 8: Form of assignment

161. The text of draft article 8 as considered by the Commission was as follows:

> "An assignment is valid as to form if it meets the form requirements, if any form requirements exist, of either the law of the State in which the assignor is located or any other law applicable by virtue of the rules of private international law."

162. The concern was expressed that draft article 8 might inadvertently refer matters related to priority (e.g. notification as a condition for obtaining priority) to a law other than the law of the assignor's location. In order to address that concern, a number of suggestions were made. One suggestion was to replace article 10 with a provision that would require no form for the assignment as between the assignor and the assignee and as against the debtor. That suggestion was objected to on the ground that it would validate assignments that were currently invalid under law applicable outside the draft Convention. Another suggestion was to refer in draft article 8 only to the law of the assignor's location. That suggestion too was objected to on the ground that it might run counter to generally acceptable private international law doctrine as to the law applicable to the form of the contract of assignment. Yet another suggestion was to revise the definition of priority so as to include steps to be taken for the purpose of obtaining priority (see A/CN.9/491, para. 18). That suggestion received broad support. It was widely felt that to the extent any form requirements needed to be satisfied for a person to obtain priority they should be referred to the law governing priority under draft article 24, namely, the law of the assignor's location. Subject to revising the definition of "priority" in draft article 5, subparagraph (g), to cover that matter, the Commission decided to delete draft article 8 (for the earlier discussion of draft art. 5, subpara. (g), see paras. 37 and 149).

New provision on form in chapter V

163. The Commission recalled its earlier decision to consider, in the context of its discussion of draft article 8, the question of including a new provision on form in chapter V (see para. 51). The Commission considered the matter on the basis of a provision along the lines of article 11 of the Convention on the Law Applicable to Contracts for the International Sale of Goods (1986) that read as follows:

> "1. A contract of assignment concluded between persons who are in the same State is formally valid if it satisfies the requirements either of the law which governs it or of the State in which it is concluded.
>
> "2. A contract of assignment concluded between persons who are in different States is formally valid if it satisfies the requirements either of the law which governs it or of the law of one of those States."

164. After discussion, the Commission approved the substance of the proposed text unchanged and referred it to the drafting group.

Article 9: Effectiveness of assignments, bulk assignments, assignments of future receivables and partial assignments

165. The text of draft article 9 as considered by the Commission was as follows:

> "1. An assignment of one or more existing or future receivables and parts of or undivided interests in receivables is effective as between the assignor and the assignee, as well as against the debtor, whether the receivables are described:
>
> "(a) Individually as receivables to which the assignment relates; or
>
> "(b) In any other manner, provided that they can, at the time of the assignment or, in the case of future receivables, at the time of the conclusion of the original contract, be identified as receivables to which the assignment relates.
>
> "2. Unless otherwise agreed, an assignment of one or more future receivables is effective without a new act of transfer being required to assign each receivable.
>
> "3. Except as provided in paragraph 1 of this article and in articles 11 and 12, paragraphs 2 and 3, this Convention does not affect any limitations on assignments arising from law.
>
> "4. An assignment of a receivable is not ineffective against, and the right of an assignee may not be denied priority with respect to the right of, a competing claimant, solely because law other than this Convention does not generally recognize an assignment described in paragraph 1 of this article."

166. It was noted that, in its current formulation, paragraph 1 might inadvertently result in the validation of an assignment of any future receivable, including pensions and wages, even if the assignment of such receivables was prohibited by law. In order to avoid that result, which would be inconsistent with paragraph 3, the suggestion was made that paragraph 1 should be revised along the following lines: "An assignment of one or more existing or future receivables and parts of or undivided interest in receivables is not ineffective ...". There was broad support for that suggestion on the understanding that, subject to that change, all the elements of paragraph 1 would be included in the new version of paragraph 1.

167. The concern was expressed that the term "undivided interest" was not sufficiently clear. It was stated that, depending on how that notion was understood in the different legal systems, the assignee could claim from the debtor the whole or a percentage of the amount of the receivable. It was also observed that it was not clear in the draft Convention how a conflict between assignees of undivided interests would be resolved. It was also stated that a distinction should be drawn in draft article 12 also between the assignment of a receivable and an assignment of an undivided interest in a receivable, since in the latter case the assignee might not have the right to claim rights securing payment of the assigned undivided interest. In order to address that concern, the suggestion was made that the notion "undivided interest" should be defined in the draft Convention. That suggestion did not attract sufficient support. It was widely felt that it was sufficiently clear that, in the case of an assignment of an undivided interest in a receivable, each assignee could claim from the debtor and that payment to any of the assignees of an undivided interest would discharge the debtor.

168. Subject to the change referred to above (see para. 166), the Commission approved the substance of draft article 9 and referred it to the drafting group.

Article 10: Time of assignment

169. The text of draft article 10 as considered by the Commission was as follows:

> "Without prejudice to the right of a competing claimant, an existing receivable is transferred and a future receivable is deemed to be transferred at the time of the conclusion of the contract of assignment, unless the assignor and the assignee have specified a later time."

170. It was noted that the opening words of draft article 10 deprived it of any meaning (i.e. determining the time of assignment for priority purposes). On that understanding, the Commission agreed to delete draft article 10.

Article 11: Contractual limitations on assignments

171. The text of draft article 11 as considered by the Commission was as follows:

> "1. An assignment of a receivable is effective notwithstanding any agreement between the initial or any subsequent assignor and the

debtor or any subsequent assignee limiting in any way the assignor's right to assign its receivables.

"2. Nothing in this article affects any obligation or liability of the assignor for breach of such an agreement, but the other party to such agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

"3. This article applies only to assignments of receivables:

"(a) Arising from an original contract for the supply or lease of [goods,] construction or services other than financial services or for the sale or lease of real estate;

"(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or other information;

"(c) Representing the payment obligation for a credit card transaction; or

"(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties."

172. It was recalled that the policy underlying paragraph 3 was to ensure that the assignment of financial service receivables not excluded from the scope of the draft Convention as a whole would be excluded from the scope of draft article 11. In order to reflect that policy more clearly, several suggestions were made, including the suggestions to reformulate paragraph 3 along the following lines: "Article 11 does not apply to assignments of receivables arising from financial service contracts"; or "Article 11 does not apply to assignments of receivables arising from loan agreements or insurance policies"; or "Article 11 does not apply to the assignment of a single, existing receivable". There was no support in the Commission for those suggestions.

173. The concern was expressed that the term "goods", which appeared within square brackets in paragraph 3 (a), was too narrow and could result in excluding intangible assets. It was also stated that paragraph 3 (b) might not be sufficiently broad to cover all intangible assets and in particular customer lists, trade names and commercial secrets. In order to address that concern, it was suggested that, at the end of paragraph 3 (b), language along the following lines should be added: "or other intangible assets". That suggestion was objected to on the ground that it could inadvertently result in including within article 11 the assignment of receivables such as insurance or loan receivables. It was widely felt, however, that assets, such as customer lists, trade names and proprietary information, were covered in paragraph 3 (b). Subject to the removal of the brackets around the word "goods", the Commission approved draft article 11 and referred it to the drafting group.

Article 12: Transfer of security rights

174. The text of draft article 12 as considered by the Commission was as follows:

"1. A personal or property right securing payment of the assigned receivable is transferred to the assignee without a new act of transfer. If such a right, under the law governing it, is transferable only with a new act of transfer, the assignor is obliged to transfer such right and any proceeds to the assignee.

"2. A right securing payment of the assigned receivable is transferred under paragraph 1 of this article notwithstanding any agreement between the assignor and the debtor or other person granting that right, limiting in any way the assignor's right to assign the receivable or the right securing payment of the assigned receivable.

"3. Nothing in this article affects any obligation or liability of the assignor for breach of any agreement under paragraph 2 of this article, but the other party to that agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not a party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

"4. Paragraphs 2 and 3 of this article apply only to assignments of receivable:

"(a) Arising from an original contract for the supply or lease of [goods,] construction or services other than financial services or for the sale or lease of real estate;

"(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or other information;

"(c) Representing the payment obligation for a credit card transaction; or

"(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

"5. The transfer of a possessory property right under paragraph 1 of this article does not affect any obligations of the assignor to the debtor or the person granting the property right with respect to the property transferred existing under the law governing that property right.

"6. Paragraph 1 of this article does not affect any requirement under rules of law other than this Convention relating to the form or registration of the transfer of any rights securing payment of the assigned receivable."

175. The concern was expressed that paragraph 1 could affect special types of mortgages that were not transferable under the law governing them. It was stated that draft article 9, paragraph 3, might not be sufficient to preserve such statutory limitations since it referred to statutory limitations on transfers of receivables not of rights securing receivables. In order to address that concern, it was suggested that, at the end of paragraph 1, language along the following lines should be added: "if such right is transferable under the law governing it". There was no support for that suggestion (see, however, new draft art. 4, para. 3, in paras. 139 and 140). Subject to the removal of the brackets around the word "goods" in paragraph 4 (a), the Commission approved the substance of draft article 12 and referred it to the drafting group.

Chapter IV
Rights, obligations and defences

Section I
Assignor and assignee

Article 13: Rights and obligations of the assignor and the assignee

176. The text of draft article 13 as considered by the Commission was as follows:

"1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are determined by the terms and conditions set forth in that agreement, including any rules or general conditions referred to therein.

"2. The assignor and the assignee are bound by any usage to which they have agreed and, unless otherwise agreed, by any practices they have established between themselves.

"3. In an international assignment, the assignor and the assignee are considered, unless otherwise agreed, to have implicitly made applicable to the assignment a usage that in international trade is widely known to, and regularly observed by, parties to the particular type of assignment or the assignment of the particular category of receivables."

177. The Commission approved the substance of draft article 13 unchanged and referred it to the drafting group.

Article 14: Representations of the assignor

178. The text of draft article 14 as considered by the Commission was as follows:

"1. Unless otherwise agreed between the assignor and the assignee, the assignor represents at the time of the conclusion of the contract of assignment that:

"(a) The assignor has the right to assign the receivable;

"(b) The assignor has not previously assigned the receivable to another assignee; and

"(c) The debtor does not and will not have any defences or rights of set-off.

"2. Unless otherwise agreed between the assignor and the assignee, the assignor does not represent that the debtor has, or will have, the ability to pay."

179. The Commission approved the substance of draft article 14 unchanged and referred it to the drafting group.

Article 15: Right to notify the debtor

180. The text of draft article 15 as considered by the Commission was as follows:

> "1. Unless otherwise agreed between the assignor and the assignee, the assignor or the assignee or both may send the debtor notification of the assignment and payment instructions, but after notification has been sent only the assignee may send such an instruction.
>
> "2. Notification of the assignment or payment instructions sent in breach of any agreement referred to in paragraph 1 of this article are not ineffective for the purposes of article 19 by reason of such breach. However, nothing in this article affects any obligation or liability of the party in breach of such an agreement for any damages arising as a result of the breach."

181. The Commission approved the substance of draft article 15 unchanged and referred it to the drafting group.

Article 16: Right to payment

182. The text of draft article 16 as considered by the Commission was as follows:

> "1. As between the assignor and the assignee, unless otherwise agreed and whether or not notification of the assignment has been sent:
>
> "(a) If payment in respect of the assigned receivable is made to the assignee, the assignee is entitled to retain the proceeds and goods returned in respect of the assigned receivable;
>
> "(b) If payment in respect of the assigned receivable is made to the assignor, the assignee is entitled to payment of the proceeds and also to goods returned to the assignor in respect of the assigned receivable; and
>
> "(c) If payment in respect of the assigned receivable is made to another person over whom the assignee has priority, the assignee is entitled to payment of the proceeds and also to goods returned to such person in respect of the assigned receivable.
>
> "2. The assignee may not retain more than the value of its right in the receivable."

183. The Commission approved the substance of draft article 16 unchanged and referred it to the drafting group.

Section II
Debtor

Article 17: Principle of debtor protection

184. The text of draft article 17 as considered by the Commission was as follows:

> "1. Except as otherwise provided in this Convention, an assignment does not, without the consent of the debtor, affect the rights and obligations of the debtor, including the payment terms contained in the original contract.
>
> "2. A payment instruction may change the person, address or account to which the debtor is required to make payment, but may not:
>
> "(a) Change the currency of payment specified in the original contract; or
>
> "(b) Change the State specified in the original contract in which payment is to be made to a State other than that in which the debtor is located."

185. The Commission considered several proposals for a new paragraph in draft article 17 to deal with the protection of consumers, including language along the following lines: "This Convention does not override law governing the protection of parties in transactions made for personal, family or household purposes" (see A/CN.9/491, para. 40); or "This Convention does not authorize a debtor who is a consumer to enter into or modify an original contract than as authorized by the law of the location of the debtor"; or "Nothing in this Convention affects the rights and obligations of the assignor and the debtor under the [special] laws governing the protection of [parties to] [persons in] transactions made for personal, family or household purposes."

186. While some doubt was expressed as to whether such a rule was necessary, the Commission agreed that the principle that the draft Convention was not intended to affect rights and obligations arising under consumer protection law should be reflected in the draft Convention. It was also widely felt that the matter went beyond debtor protection and should be addressed in draft article 4 or 6. As a matter of drafting, the

suggestion was made that reference could be made to the habitual residence of a consumer. It was noted, however, that draft article 5, subparagraph (h), might be sufficient in that respect. On the understanding that the matter of consumer protection would be addressed in draft article 4, the Commission approved the substance of draft article 17 and referred it to the drafting group. The Commission also decided that the reference in draft articles 21 and 23 to consumer protection would no longer be necessary and could be deleted.

Article 37: Applicable law in territorial units

187. Recalling its decision to defer discussion of draft article 37 to a later point in time (see para. 69), the Commission resumed its discussion on the basis of a new proposal that was as follows:

"Article 36
"Application to territorial units

"...

"3 *bis*. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the law governing the original contract is the law in force in a territorial unit to which this Convention does not extend, the law governing the original contract is considered not to be the law of a Contracting State.

"Article 37
"Location in a territorial unit

"If a person is located in a State that has two or more territorial units, that person is located in the territorial unit in which it has its place of business. If the assignor or the assignee has a place of business in more than one territorial unit, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one territorial unit, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person. A State with two or more territorial units may specify by declaration at any time other rules for determining the location of a person within that State.

"Article 37 bis
"Applicable law in territorial units

"Any reference in this Convention to the law of a State means, in the case of a State that has two or more territorial units, the law in force in the territorial unit. Such a State may specify by declaration at any time other rules for determining the applicable law, including rules that render applicable the law of another territorial unit of that State."

188. It was stated that the proposed provisions were necessary to ensure transparency and consistency in the application of the draft Convention in the case of a State with two or more territorial units. It was explained that the proposed paragraph 3 *bis* of draft article 36, which tracked the language of paragraph 3, was intended to deal with the application of the draft Convention in the case of a declaration under draft article 36. New draft article 37, which tracked the definition of location in draft article 5, subparagraph (h), and the language of draft article 37, was aimed at addressing location of a person in a State with two or more territorial units. New draft article 37 *bis* was designed to address the meaning of law in the case of a State with two or more territorial units.

189. While support was expressed in favour of the proposed provisions, a number of questions were raised. One question was whether the reference to territorial units was sufficient to indicate that units with different systems of law were involved. In response, it was stated that no reference should be added to different systems of law, since the proposed provisions needed to be applied to territorial systems with the same system of law. It was noted, however, that while the reference to territorial units with different systems of law in draft article 36, paragraph 1, would cover also the proposed provisions, the reference to different systems of law should be understood in a broad way and cover uniform law enacted in several territorial units as a distinct body of law by a legislative or other authority in each territorial unit. Another question was whether a State could specify that a branch of an entity, such as a bank, in a territorial unit should be treated as a separate entity. In response, it was observed that, under the rule in the last sentence of new draft article 37, a State had the right to specify in a declaration the rules it wished to apply with respect to location of persons in its territorial

units. After discussion, the Commission approved draft articles 36, paragraph 3 *bis*, 37 and 37 *bis* and referred them to the drafting group.

Article 38: Conflicts with other international agreements

190. Recalling its decision to approve draft article 38 on the understanding that the relationship between the draft Convention and the draft Unidroit Convention might need to be revisited (see para. 74), the Commission considered several proposals for an amendment of draft article 38 to deal with the matter. One proposal read as follows:

> "*Variant A*
>
> "This Convention does not apply to the assignment of receivables taken as security in financing mobile equipment to the extent that these assignments are governed by an international convention [on international interests].
>
> "*Variant B*
>
> "This Convention does not apply to the assignment of receivables that become associated rights in connection with the financing of categories of mobile equipment, such as aircraft equipment, railway rolling stock and space property, encompassed by an international convention [on international interests]."

191. While some support was expressed for that proposal, discussion focused on another proposal, which read as follows:

> "1. This Convention does not apply to assignments of receivables taken as security in the financing of mobile equipment, but only where such receivables are within the scope of the Unidroit Convention on International Interests in Mobile Equipment.
>
> "2. This Convention supersedes the Unidroit Convention on International Factoring (the "Ottawa Convention") except, as relates to the rights and obligations of the debtor, where the debtor is located in a State party to the Ottawa Convention that is not a party to this Convention."

192. In support of the proposed text, it was stated that the matter should not be left to the classical rules on conflicts between international agreements. It was also said that the common objective of both texts to increase access to lower-cost credit could best be served by a clear and innovative solution, such as the one proposed, and such solution could enhance the certainty and predictability required in practice. In addition, it was observed that paragraph 1 of the proposed text introduced the appropriate rule, in particular with respect to financing transactions relating to aircraft in which receivables were inextricably linked with the aircraft. In addition, it was pointed out that, in view of the fact that the Unidroit text relating to aircraft covered both payment and other performance rights, an approach other than the one proposed would result in subjecting aircraft-related receivables to a legal regime other than the regime governing other aircraft-related performance rights. Moreover, it was pointed out that, in view of the fact that traditionally rights in aircraft were filed with a national aviation authority, the law of the place of registration was more appropriate to govern priority issues than the law of the assignor's location. It was also said that an exception of aircraft-related receivables along the lines of paragraph 1 of the proposed text would have the beneficial effect of avoiding any tension that might affect the ratification process of either convention.

193. While some support was expressed for that proposal, it was widely felt that draft article 38, as amended by the Commission (see para. 74), was sufficient. It was stated that the approach proposed was excessive and could create legal gaps, since the draft Convention would not apply even if the draft Unidroit Convention did not apply to a particular transaction and even if the latter had not entered into force. It was also observed that the proposed exception could seriously undermine the usefulness of the draft Convention since it was open-ended. In addition, it was said that nothing precluded the drafters of the draft Unidroit Convention from providing that it superseded the draft Convention, a possibility alluded to by the International Civil Aviation Organization in its official comments (see A/CN.9/490, p. 10). Moreover, it was observed that it was very difficult to refer in draft article 38 to a convention that had not yet been concluded.

194. The suggestion was also made that, further to the amendment of draft article 38, agreed upon by the Commission at its current session, the proviso in

paragraph 1 of draft article 38 was not necessary and could be deleted. There was wide support for that proposal. However, to reflect the decision of the Commission that another convention should prevail only if it specifically governed a transaction that would otherwise be governed by the draft Convention, it was agreed that the words "contains provisions specifically governing" should be replaced with words along the lines "specifically governs". Subject to those changes, the Commission reiterated its approval of draft article 38 and referred it to the drafting group.

C. Report of the drafting group

195. The Commission requested a drafting group established by the Secretariat to review the draft Convention and the annex to the draft Convention, with a view to ensuring consistency between the various language versions. At the close of its deliberations on the draft Convention, the Commission considered the report of the drafting group and adopted the draft Convention and the annex to the draft Convention as a whole. The Commission also requested the Secretariat to prepare a revised version of the commentary on the draft Convention.

196. It was agreed that, in draft article 1, paragraph 4, reference should be made to paragraphs 1-3 of draft article 1. It was also agreed that, in the Chinese version of draft article 24, after paragraph 2 (a), the word "and" should be added. In addition, it was agreed that draft article 25, paragraph 2, should be reproduced in draft article 31 in order to avoid any uncertainty as to whether it was covered by draft article 32. Furthermore, it was agreed that, in draft article 35 (new draft art. 34), a reference should be added within square brackets to the time during which the draft Convention should be opened for signature (i.e. two years after the date of adoption of the draft Convention by the General Assembly).

197. Moreover, it was agreed that in the French version of draft article 38, paragraph 1, the word "régie" should be replaced with the word "couverte". It was also agreed that, for reasons of consistency, draft article 8 of the annex to the draft Convention should refer to "the time of conclusion of the contract of assignment".

D. Procedure for the adoption of the draft Convention

198. After completing its work on the draft Convention, the Commission considered the procedures to be followed for the adoption of the text as a United Nations convention. The Commission supported a proposal to recommend that the General Assembly adopt the draft Convention in its current form and open it for signature by States. It was widely felt that the draft Convention had received sufficient consideration, had reached the level of maturity for it to be generally acceptable to States and formed a balanced text that the Assembly could conclude without reconsidering its provisions. It was also generally felt that the draft Convention could significantly facilitate receivables financing and thus increase the availability of credit at a more affordable cost, which would enhance international trade and benefit producers, wholesalers, retailers and consumers of goods and services.

199. A suggestion was also made that the recommendation to the General Assembly could also make some reference to a diplomatic conference on the condition that, until consideration of the draft Convention by the Sixth Committee of the Assembly, a State would offer to host a diplomatic conference and would be able to host it early in 2002. However, it was agreed that the recommendation to the Assembly should be clear and unequivocal in order to avoid inadvertently casting any doubt as to the maturity and the acceptability of the text. It was stated that no State was precluded from making an offer to host a diplomatic conference and that the matter would be duly considered by the Sixth Committee.

E. Decision of the Commission and recommendation to the General Assembly

200. At its 722nd meeting, on 2 July 2001, the Commission adopted by consensus the following decision and recommendation to the General Assembly:

> "*The United Nations Commission on International Trade Law,*
>
> "*Recalling* that at its twenty-eighth session, in 1995, it decided to prepare uniform legislation

on assignment in receivables financing and entrusted the Working Group on International Contract Practices with the preparation of a draft,

"*Noting* that the Working Group devoted nine sessions, held from 1995 to 2000, to the preparation of the draft convention on the assignment of receivables in international trade,

"*Having considered* the draft Convention at its thirty-third session, in 2000, and at its thirty-fourth session, in 2001,

"*Drawing attention* to the fact that all States and interested international organizations were invited to participate in the preparation of the draft convention at all the sessions of the Working Group and at the thirty-third and thirty-fourth sessions of the Commission, either as member or as observer, with a full opportunity to speak and make proposals,

"*Also drawing attention* to the fact that the text of the draft convention was circulated for comments once before the thirty-third session of the Commission and a second time in its revised version before the thirty-fourth session of the Commission to all Governments and international organizations invited to attend the meetings of the Commission and the Working Group as observers and that such comments were before the Commission at its thirty-third and thirty-fourth sessions,[6]

"*Considering* that the draft convention has received sufficient consideration and has reached the level of maturity for it to be generally acceptable to States,

"1. *Submits* to the General Assembly the draft convention on the assignment of receivables in international trade, as set forth in annex I to the report of the United Nations Commission on International Trade Law on its thirty-fourth session;[7]

"2. *Recommends* that the General Assembly consider the draft convention with a view to concluding at its fifty-sixth session, on the basis of the draft convention approved by the Commission, a United Nations convention on the assignment of receivables in international trade."

Chapter IV
Draft UNCITRAL Model Law on Electronic Signatures and draft Guide to Enactment

A. Introduction

201. Pursuant to decisions taken by the Commission at its twenty-ninth session, in 1996,[8] and thirtieth session, in 1997,[9] the Working Group on Electronic Commerce devoted its thirty-first to thirty-seventh sessions to the preparation of the draft UNCITRAL Model Law on Electronic Signatures (hereinafter referred to also as "the draft Model Law" or "the new Model Law"). Reports of those sessions are found in documents A/CN.9/437, 446, 454, 457, 465, 467 and 483. At its thirty-seventh session, held in Vienna in September 2000, the Working Group adopted the substance of the draft Model Law, the text of which was annexed to the report of that session (A/CN.9/483). It was noted that the draft Model Law would be submitted to the Commission for review and adoption at the current session (A/CN.9/483, para. 23).

202. The text of the draft Model Law as approved by the Working Group was circulated to all Governments and to interested international organizations for comment. At the current session, the Commission had before it the comments received from Governments and international organizations (A/CN.9/492 and Add.1-3).

203. In preparing the Model Law, the Working Group noted that it would be useful to provide in a commentary additional information concerning the Model Law. Following the approach taken in the preparation of the UNCITRAL Model Law on Electronic Commerce, there was general support for a suggestion that the new Model Law should be accompanied by a guide to assist States in enacting and applying that Model Law. The guide, much of which could be drawn from the *travaux préparatoires* of the Model Law, would also be helpful to other users of the Model Law. At its thirty-eighth session, held in New York in March 2001, the Working Group reviewed the draft Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures, based on a revised draft prepared by the Secretariat (A/CN.9/WG.IV/WP.88). The deliberations and decisions of the Working Group with respect to the draft Guide are reflected in the report of that session

(A/CN.9/484). The Secretariat was requested to prepare a revised version of the Guide, based on those deliberations and decisions. At the current session, the Commission had before it the revised text of the draft Guide (A/CN.9/493, hereinafter referred to as "the draft Guide" or "the Guide").

B. Consideration of comments from Governments and international organizations

204. At the outset of the discussion, the Commission considered the comments received from Governments and international organizations (A/CN.9/492 and Add.1-3).

Article 2

Subparagraph (b)

205. A proposal was made (see A/CN.9/492/Add.1) to amend draft article 2, subparagraph (b), to read:

> "'Certificate' means a data message or other record confirming:
>
> "(i) In a case where a private and a public cryptographic key are used respectively to create and verify an electronic signature, the link between the signatory and the public cryptographic key; and
>
> "(ii) In any case, the link between the signatory and the signature creation data."

206. It was stated that the intention behind the proposed amendment was not to promote public keys as a preferred technological method but merely to align the text of the draft Model Law with improvements made to the draft Guide at the thirty-eighth session of the Working Group. The amendment, in line with the draft Guide (A/CN.9/493, annex, para. 97), was described as being necessary to clarify that, where a dual-key "digital signature" and a related certificate were being used, an important function of the certificate was to certify that it was the "public key" that belonged to the signatory (see A/CN.9/492/Add.1).

207. In response to the proposal, concern was expressed that the express reference to "cryptographic key" would introduce a technology-specific element to the definition of "certificate", which would not be consistent with the paramount principle of technological neutrality underlying the draft Model Law. It was pointed out that the text as currently drafted dealt sufficiently with public-key cryptography. After discussion, the Commission agreed to retain the substance of draft article 2, subparagraph (b), unchanged.

Article 5

208. A proposal was made (see A/CN.9/492/Add.2) to amend draft article 5 by deleting the words "unless that agreement would not be valid or effective under applicable law". As possible alternatives to such deletion, it was also suggested that the words "applicable law" could be replaced with the words "mandatory principles of public policy" or "mandatory provisions of applicable law". The amendment of draft article 5 according to one of those alternatives was presented as necessary in order to reduce confusion in the application and interpretation of article 5 by national courts, as well as to clarify that any limitation on party autonomy was intended to result only from mandatory rules. It was also stated that referring in the draft Model Law to limitations to party autonomy was superfluous, since in most legal systems mandatory rules of public policy or *ordre public* would override party autonomy in all cases, whether or not they were mentioned in the text. In addition, it was stated that draft article 5 as currently drafted could create the mistaken impression that the draft Model Law was intended to limit party autonomy more than was absolutely necessary.

209. Although some support was expressed in favour of the various alternative proposals, the widely prevailing view was that the text of draft article 5 should be retained as currently drafted. It was widely felt that, while both restatements of the well-known principle of party autonomy in commercial relationships and of the traditional limitations to that principle might be regarded as equally superfluous, the text served a useful purpose in clarifying the regime of party autonomy in the context of the draft Model Law. It was generally agreed that altering the balance currently reflected in draft article 5 might result in the draft Model Law unduly interfering with the determination by domestic law as to the mandatory or non-mandatory nature of statutory provisions.

Article 7

210. A proposal was made (see A/CN.9/492) to amend draft article 7, paragraph 1, to read:

> "Any person, organ or authority, whether public or private, specified by the enacting State as competent may determine which electronic signatures satisfy the provisions of article 6, without prejudice to the possibility for the parties to agree on the use of any method for creating an electronic signature."

211. It was stated that the intention behind the proposed amendment was to ensure that draft article 7 did not limit the freedom given to parties by draft article 3, as combined with draft article 5, to assign legal validity to particular methods of creating electronic signatures that could be different from those determined by a relevant person, organ or authority under draft article 7, paragraph 1 (see A/CN.9/492). Notwithstanding general support for the principle underlying the proposed amendment, namely, that parties should retain autonomy in respect of determining the facts for reliability of an electronic signature, it was widely felt that the matter was adequately addressed in draft article 6, paragraph 1, which referred to "any relevant agreement". In that respect, attention was drawn to paragraphs 127 and 133 of the draft Guide, which appeared to indicate clearly that draft article 7 respected the principle of party autonomy. Recognizing that draft article 7 did not impinge upon the principle of party autonomy, the Commission decided to retain the substance of draft article 7 as currently drafted and referred it to the drafting group.

Article 8

Paragraph 1 (a)

212. A proposal was made (see A/CN.9/492/Add.2) to amend draft article 8, paragraph 1 (a), by inserting the words "in accordance with accepted commercial practices" before the words "reasonable care". In support of the proposal, it was stated that draft article 8 (and draft articles 9-11) should be subject to a general limitation that the criteria and rules therein should be applied as was reasonable under the circumstances of the type of transaction and the nature of the parties. It was also stated that the imposition of strict obligations would be inappropriate if applied to a wide variety of transactions that had developed in electronic commerce. It was further stated that a reference to "accepted commercial practices" might assist the signatories in determining what might constitute "reasonable care" in a given situation, for example where a signatory was faced with the overall obligation to maintain the confidentiality of a cryptographic key under draft article 8 but that key was stored as part of the software (possibly the Internet browser) loaded on the signatory's computer. In such a situation, the signatory (who would not necessarily know where and how the key was stored) might need to receive guidance as to the nature of the signature data and the proper rules of conduct to be observed to avoid improper use of the cryptographic key. A concern was expressed that, in the absence of any such guidance, prospective users might be discouraged from using electronic signature techniques, a result that would run counter to the objectives of the draft Model Law. With a view to accommodating that concern, it was suggested that language might be inserted in the text of draft article 8 along the following lines: "in determining reasonable care, regard may be had to a relevant commercial practice, if any". A related suggestion was the insertion of the words "in determining reasonable care, regard is to be had to well-established and widely recognized international practices, if any".

213. There was general agreement in the Commission as to the importance of providing guidance, education and protection to prospective users of electronic signature techniques in general and prospective signatories in particular. However, the proposed amendment to draft article 8, paragraph 1 (a), was strongly opposed on the grounds that a reference to "accepted", "habitual" or "relevant" commercial practices might result in increased confusion for users, since there currently existed no established commercial practice with respect to electronic signatures. It was pointed out that adding a reference to commercial practices would not increase the level of protection afforded to the prospective user of electronic signature techniques. Such a reference would rather place a heavier burden on the signatory, who might end up being faced with the obligation to prove compliance with non-existing or unknown practices in addition to the initial obligation to prove that it had exercised "reasonable care" in protecting its signature creation data. It was generally agreed that the standard of reasonable care set forth in the current text of draft article 8,

paragraph 1 (a), together with the general reference to the observance of good faith under draft article 4, provided a well-understood concept, which offered sufficient guidance to users and to courts to facilitate the emergence of trust in the use of electronic signature techniques. At the same time, the standard of reasonable care was sufficiently broad and flexible to include a reference to relevant practices, if any.

214. After discussion, the Commission decided to maintain the substance of draft article 8, paragraph 1 (a), unchanged. It was agreed that the Guide to Enactment should reflect that, when interpreting the notion of "reasonable care", relevant practices, if any, might need to be taken into account. "Reasonable care" under the draft Model Law should also be interpreted with due regard being given to its international origin, as indicated in draft article 4.

Paragraph 1 (b)

215. A proposal was made (see A/CN.9/492/Add.2) to amend the opening words of draft article 8, paragraph 1 (b), to read "without undue delay, use reasonable efforts to initiate any procedures made available to the signatory to notify relying parties if:".

216. Wide support was expressed in support of the proposal to replace the strict obligation to notify set forth in draft article 8, paragraph 1 (b), by a more flexible requirement to use "reasonable efforts" to notify any person who might be expected to rely on the electronic signature in cases where the electronic signature appeared to have been compromised. In view of the fact that it might be impossible for the signatory to track down every person that might rely on the electronic signature, it was generally felt that, where the electronic signature appeared to have been compromised, it would be excessively burdensome to charge the signatory with the obligation to achieve the result of actually notifying every person that might conceivably rely on the signature. It was also agreed that it would be more appropriate to express the rule in the form of an obligation for the signatory to use all reasonable means at its disposal to notify the relying parties. In the context of that discussion, it was pointed out that paragraph 139 of the Guide should make it clear that the notion of "reasonable efforts" or "reasonable diligence" should be interpreted in the light of the general principle of good faith expressed in draft article 4, paragraph 1.

217. As to the proposed addition of a reference to "procedures made available to the signatory to notify relying parties", it was pointed out that, in many practical instances, procedures would be placed at the disposal of signatories by certification service providers to be followed in cases where it appeared that the electronic signature had been compromised. Such procedures could generally not be varied by the signatory. It was stated that, in practice, such procedures were increasingly provided by relying parties. It was explained that it was essential to provide the signatory with a "safe harbour" provision to the effect of enabling a signatory to demonstrate that it had been sufficiently diligent in attempting to notify potentially relying parties if the signatory had followed such procedures. While support was expressed in favour of the reasoning underlying the proposal, it was generally felt that the words "reasonable efforts to initiate any procedures" were too vague and might be read as diluting the obligation of the signatory to undertake a good faith attempt to notify relying parties.

218. After discussion, the Commission decided that the opening words of article 8, paragraph 1 (b), should read along the lines of "without undue delay, use reasonable efforts to notify, such as by using means made available by the certification service provider pursuant to article 9, to any person that may be reasonable be expected by the signatory to rely on or to provide services in support of the electronic signature if: ...". After review by the drafting group, the Commission agreed that the text should read as follows: "Without undue delay, utilize means made available by the certification service provider pursuant to article 9, or otherwise use reasonable efforts, to notify any person that may reasonably be expected by the signatory to rely on or to provide services in support of the electronic signature if: ...".

Paragraph 2

219. A proposal was made (see A/CN.9/492/Add.2) to amend draft article 8, paragraph 2, to read "A signatory shall bear the legal consequences of its failure to satisfy the requirements of paragraph 1". Among the reasons given in support of that proposal, it was stated that the text of draft article 8, paragraph 2 (and of draft article 9, paragraph 2), might lend itself to the mistaken interpretation that a purpose of the Model Law was to establish a rule of strict liability binding on both the signatory and the certification service

provider. It was pointed out that determining such strict liability rules for certain parties would be an exceptional position to take within an instrument geared to the harmonization of certain rules of commercial law, with a need to balance the obligations of all the parties involved, and to facilitating the use of electronic commerce. A concern was expressed that, unless the proposed amendment was made, the Model Law could result in inhibiting the development of electronic commerce, in particular in countries that had not yet implemented legislation in that area. The aim of the proposal was thus to revise draft article 8, paragraph 2, to reflect the language used in draft article 11 with respect to the conduct of the relying party.

220. While it was generally agreed that the Model Law was not intended to create grounds for imposing a strict liability regime on either the signatory or the certification service provider, doubts were expressed as to whether the proposed language would sufficiently reflect the distinction to be made between the situation of the signatory and the certification service provider, on the one hand (both of whom should be faced with obligations regarding their conduct in the context of the electronic signature process), and the relying party, on the other (for whom the Model Law might appropriately establish rules of conduct but who should not be faced with the same level of obligations as the other two parties). With a view to maintaining in the Model Law a distinction in the treatment of the relying party as opposed to the other two parties, it was suggested that the text of draft article 8, paragraph 2, should read as follows: "A signatory shall be exposed to liability or to any other applicable legal consequence for its failure to satisfy the requirements of paragraph 1." A similar adjustment was suggested for draft article 9, paragraph 2. It was explained that the proposed language would eliminate the risk of any mistaken interpretation that the Model Law was intended to interfere with the legal consequences that might flow from the law applicable outside the Model Law. At the same time, the proposed language would appropriately draw the attention to the fact that the legal consequences of failure to comply with the requirements of paragraph 1 would not necessarily involve only liability. Other legal consequences might include, for example, the faulty party being stopped from denying the binding effect of the electronic signature.

221. While support was expressed in favour of the latter proposal, the prevailing view was that the entire issue of the legal consequences to be drawn from the failure to comply with the requirements of paragraph 1, as well as the issue of a possible distinction between the legal position of the signatory and the certification service provider, on the one hand, and the legal position of the relying party, on the other hand, should be left to the law applicable outside the Model Law. After discussion, the Commission decided that the substance of paragraph 2 should read along the lines of "A signatory shall bear the legal consequences of its failure to satisfy the requirements of paragraph 1". The matter was referred to the drafting group.

Proposed new paragraph

222. A proposal was made (see A/CN.9/492) to add a paragraph to draft article 8 along the following lines:

> "It shall provide to the certification service provider for any party relying on the certificate reasonably accessible means to ascertain, where relevant, from the certificate referred to in article 9 or otherwise, any limitation on its responsibility."

It was explained that the aim of the proposed language was to make it clear that the signatory should inform the relying parties (through the certification service provider) of any limitation on the maximum value of the transactions for which the signatory's electronic signature might be used. While general support was expressed in favour of the explanation underlying the proposal, it was generally felt that the proposed wording was unclear and probably unnecessary, in view of the fact that the certification service provider, under draft article 9, paragraph 1 (d) (ii) and (iv), was under an obligation to provide accessible means by which a relying party might ascertain "any limitation on the purpose or value for which the signature creation data or the certificate may be used" and "any limitation on the scope or extent of liability stipulated by the certification service provider". While an alternative proposal to add the words "or by the signatory" at the end of draft article 9, paragraph 1 (d) (iv), received some support, the prevailing view was that the issue was sufficiently taken care of by draft article 9, paragraph 1 (d) (ii), as currently drafted. As to draft article 8, it was agreed that no change in the substance of the provision was necessary, since it would be in the interest of the signatory to inform the relying parties about any limitation that might affect the maximum

value of the transactions for which the signatory's electronic signature might be used. Creating an additional obligation of the signatory in that respect would thus be superfluous.

Draft article 9

Paragraph 1 (d) (iv)

223. A proposal was made (see A/CN.9/492) to amend the end of the sentence in draft article 9, paragraph 1 (d) (iv), to read "any limitation on the scope or extent of its liability stipulated by it". It was generally agreed that the proposal was merely of a drafting nature and, on that basis, the issue was referred by the Commission to the drafting group.

Paragraph 1 (f)

224. A proposal was made (based upon a proposal set forth in A/CN.9/492/Add.2) to amend draft article 9, paragraph 1 (f), by changing the substance of the provision from an obligation upon the certification service provider to "utilize trustworthy systems, procedures and human resources in performing its services" to an obligation on the certification service provider to disclose the systems, procedures and human resources it used in performing its services. It was stated that the effect of the proposed language would be simply to enable the relying party to determine whether the systems, procedures and human resources used by the certification service provider were trustworthy or not. The view was expressed that it was necessary to narrow the obligation of the certification service provider, which was too broad and might be inappropriate if applied to a wide range of electronic commerce functions. It was stated that the standard of trustworthiness set forth in the article was too high for many electronic signatures and services, for example, the many businesses that provided certification services in the course of their business, such as services provided by an employer to its employees. The proposal was to delete existing paragraph 1 (f) and add, as a new item (vii) to draft article 9, paragraph 1 (d), words along the lines of "the systems, procedures and human resources utilized in performing its services".

225. Although some support was expressed in favour of the proposal, provided that the connection to article 10 was retained, the prevailing view was that the proposal was not acceptable. Concern was expressed that, by removing the obligation upon the certification service provider to utilize trustworthy systems and imposing a new obligation upon the relying party to satisfy itself that the systems, procedures and human resources used by the certification service provider were in fact trustworthy, the proposal would alter the balance of duties and obligations between the parties, a balance that had already been discussed and established by the Working Group. A further concern was that the proposal appeared to dilute the importance of article 10, which was viewed as an important provision of the draft Model Law.

226. As a compromise, a further proposal was made to maintain the provision as article 9, paragraph 1 (f), but to amend the drafting to read "utilize systems, procedures and human resources that are suitably trustworthy for the purposes for which the certificate was intended to be used". Although that proposal received some support, the prevailing view was that it was not acceptable. A principal ground of objection was that the intention of article 9 was to ensure that, where an electronic signature that might be used for legal effect was supported by a certification service provider, the certification service provider should meet certain standards and satisfy certain obligations, including using trustworthy systems, procedures and human resources. In referring to the possible use of the certificate, the compromise proposal removed the general obligation for the certification service provider to use trustworthy systems, procedures and human resources and, in doing so, moved the focus away from the standards that should be met in order to support the electronic signature process properly.

227. After discussion, the Commission decided to retain the substance of draft article 9, paragraph 1 (f), unchanged.

Paragraph 2

228. A proposal was made (based upon a proposal set forth in A/CN.9/492/Add.2) that draft article 9, paragraph 2, should be amended to be made consistent with changes already agreed to with respect to draft article 8, paragraph 2, and that a *chapeau* should be added to draft article 9, paragraph 2, to recognize the limitations to liability set forth in draft article 9, paragraph 1 (d) (ii) and (iv). The following words were proposed for paragraph 2: "Subject to any limitations ascertainable under paragraph 1 (d), the certification

service provider shall bear the legal consequences of its failure to comply with paragraph 1."

229. The basis of the proposal to add a *chapeau* to article 9, paragraph 2, was the concern that had been expressed as to whether, under the language of the draft article, it was clear that the limitations referred to in paragraph 1 (d) (ii) and (iv) would operate to modify liability pursuant to draft article 9, paragraph 2.

230. In respect of the first issue, the widely prevailing view was that draft article 9, paragraph 2, should adopt the same formulation that had been agreed in respect of draft article 8, paragraph 2, that is, that the certification service provider should bear the legal consequences of its failure to comply with the requirements of paragraph 1. As to the proposal to add a *chapeau* to draft article 9, paragraph 2, it was widely agreed that the proposed words were not necessary. It was stated that, since the limitations set forth in paragraph 1 (d) (ii) and (iv) would be implemented into the national law of any State adopting the Model Law, they would therefore be a part of the legal regime that determined the consequences of the failure of the certification service provider to satisfy paragraph 1. On that basis and on the basis of the general formulation of the agreed amendment to draft article 9, paragraph 2, it was felt that the limitations referred to in paragraph 1 (d) were sufficiently taken into account and the additional words were therefore unnecessary. It was proposed that, to facilitate understanding of those provisions of the Model Law, the Guide to Enactment should clearly state that the intention of paragraph 2 of articles 8 and 9 was for the legal consequences of the failure to comply with the obligations set forth in those articles to be determined by applicable national law. The Commission decided to adopt that part of the proposal that would align the language of draft article 9, paragraph 2, with draft article 8, paragraph 2, and referred it to the drafting group (for the discussion regarding article 8, paragraph 2, see above, paras. 219-221).

Draft article 10

231. A proposal was made (see A/CN.9/492/Add.2) to amend the opening words of draft article 10 to read:

> "For the purposes of article 9, paragraph 1 (f), in determining whether, or to what extent, any systems, procedures and human resources utilized by a certification service provider are trustworthy, regard may be had to the following factors, if and to the extent generally applied in commercial practice for the level of service provided, and if relied on by a relying party".

The reason stated for the proposal was that the standards currently set forth in draft article 10 considerably exceeded actual practices for services generally provided today.

232. While some support was expressed in favour of the proposal, the widely prevailing view was that the purpose of draft article 10 was not to impose an exhaustive list of strict standards to be satisfied by certification service providers in all circumstances but merely to set forth a list of illustrative factors that could be taken into account in assessing whether the certification service provider had utilized "trustworthy systems, procedures and human resources in performing its services". It was generally felt that the illustrative and non-mandatory nature of draft article 10 was sufficiently reflected by the words "regard may be had to the following factors". After discussion, the Commission decided to retain the opening words of draft article 10 as currently drafted and referred it to the drafting group.

Subparagraph (f)

233. A proposal was made (see A/CN.9/492) to amend draft article 10, subparagraph (f), to read "the existence of a declaration by the State, an accreditation body or an independent auditing body regarding compliance with or existence of the foregoing".

234. It was stated by its proponents that the proposed amendment was appropriate, in particular in the case of developing countries, which might have fewer resources for the establishment of accreditation bodies such as certification service providers, so as to allow such a function to be performed by an independent auditing body. Strong opposition was expressed to the proposed deletion of the reference to situations where a declaration regarding compliance with the factors listed in draft article 10 would be made by the certification provider itself, for example by way of a certification practice statement. It was pointed out that in many countries such declarations by the certification service providers themselves were essential in the development of electronic commerce practice. No objection was made to the possible addition of a

reference to situations where a declaration under draft article 10, subparagraph (f), would be made by independent auditing bodies. After discussion, however, it was generally felt that such an addition was unnecessary in view of the fact that the possible intervention of an independent auditing body was sufficiently covered by the reference to "an accreditation body" in the current text of draft article 10, subparagraph (f), and by the mention of "any other relevant factor" under draft article 10, subparagraph (g). The Commission decided to retain the substance of draft article 10, subparagraph (f), as currently drafted and referred it to the drafting group.

Draft article 11

235. A proposal made (see A/CN.9/492/Add.2) to amend draft article 11 so as to provide, in accordance with commercial and transactional practices where applicable, that relying parties should assume a greater responsibility for ascertaining the reliability of a signature than was reflected in the current text, was withdrawn. That withdrawal was made in recognition that amendments made to the draft text had adequately evened out the relative position of the parties.

Subparagraph (b)

236. A proposal was made (see A/CN.9/492) to amend draft article 11, subparagraph (b), by replacing the words "where an electronic signature is supported by" with the words "where a signature is based on". Opposition to that amendment was voiced on the basis that it could narrow down the scope of draft article 11, subparagraph (b). After discussion, the Commission decided to retain the substance of draft article 11, subparagraph (b), as currently drafted and referred it to the drafting group.

Draft article 12

237. Clarification was sought as to what the Commission understood the expression used in article 12 of "substantially equivalent level of reliability" to mean. Referring to paragraph 152 of the draft Guide, the Commission agreed that the text sought to take account of the variations in levels of reliability found within and outside national borders. It was accepted that it was not the level of security being evaluated but rather the security or administrative requirements that could be set up differently and the use of the expression sought, following the functional approach, to establish comparability on those issues. It was considered that an explanation along those lines, as set out in paragraph 5 of the draft Guide, could usefully be referred to in the section of the Guide dealing with article 12.

C. Consideration of the remainder of the draft articles

238. Having completed its consideration of the proposals that were raised by delegations on the basis of the comments submitted by Governments and interested international organizations with respect to the text of the draft Model Law (A/CN.9/492 and Add.1-3), the Commission proceeded with a systematic review of the draft articles.

Title

239. The title of the draft model law as considered by the Commission was as follows: "UNCITRAL MODEL LAW ON ELECTRONIC SIGNATURES (2001)".

240. The Commission approved the substance of the title of the draft Model Law and referred it to the drafting group.

Article 1: Sphere of application

241. The text of draft article 1 as considered by the Commission was as follows:

> "This Law applies where electronic signatures are used in the context* of commercial**

* The Commission suggests the following text for States that might wish to extend the applicability of this Law: "This Law applies where electronic signatures are used, except in the following situations: [...]."

** The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road."

activities. It does not override any rule of law intended for the protection of consumers."

242. The Commission approved the substance of draft article 1 and referred it to the drafting group.

Article 2: Definitions

243. The text of draft article 2 as considered by the Commission was as follows:

"For the purposes of this Law:

"(a) 'Electronic signature' means data in electronic form in, affixed to, or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and indicate the signatory's approval of the information contained in the data message;

"(b) 'Certificate' means a data message or other record confirming the link between a signatory and signature creation data;

"(c) 'Data message' means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

"(d) 'Signatory' means a person that holds signature creation data and acts either on its own behalf or on behalf of the person it represents;

"(e) 'Certification service provider' means a person that issues certificates and may provide other services related to electronic signatures;

"(f) 'Relying party' means a person that may act on the basis of a certificate or an electronic signature."

Subparagraph (a) ("Electronic signature")

244. A suggestion was made that the words "may be used" in subparagraph (a) should be replaced with words such as "is technically capable". That suggestion was opposed on the basis that such language was not appropriate for use in a legislative text and also on the basis that the proposed amendment was less flexible than the text as currently drafted and that it could introduce a rigid requirement into the definition of electronic signature. Despite rejecting that proposed amendment, the Commission agreed that the issue could be referred to in the Guide to Enactment.

245. A broader concern was raised that the aspect of the definition of electronic signature in paragraph 2 (a), which referred to the signatory's approval of the information contained in the data message, was problematic and that it was not imperative for a signature to indicate the approval of a message. It was suggested that the word "may" should be included before the word "indicate" to clarify that the signatory's approval of the contents of the data message was to have no higher status than the element of the definition stating that the electronic signatory may identify the signatory. The Commission rejected any amendment to the text on the basis that the definition had been extensively debated and that the text had been crafted so as to dovetail with the text of the UNCITRAL Model Law on Electronic Commerce, which listed the functions of an electronic signature. It was noted that the matter could be further clarified in the draft Guide. In response to a question raised, the Commission noted that the consent of a signatory to the information contained in the data message should be gauged at the time when the signature was affixed to the document rather than at the time when the signature was created.

246. After discussion, the proposal to amend the definition was withdrawn.

Subparagraph (d) ("Signatory")

247. As a matter of drafting, it was suggested that the texts should be aligned in the different languages with respect to the use of the expression "acts on its own behalf or on behalf of the person it represents". The matter was referred to the drafting group for its consideration.

248. In reply to a question that was raised as to the substance of the definition, it was recalled that, as indicated in the draft Guide, the notion of "signatory" could not be severed from the person or entity that actually generated the electronic signature, since a number of specific obligations of the signatory under the Model Law were logically linked to actual control over the signature creation data. However, in order to cover situations where the signatory would be acting in representation of another person, the phrase "or on behalf of the person it represents" had been retained in the definition of "signatory". The extent to which, in addition to the person actually applying an electronic signature, a person would be bound by an electronic

signature generated "on its behalf", for example, by one of its employees, was a matter to be settled in accordance with the law governing, as appropriate, the legal relationship between the signatory and the person on whose behalf the electronic signature was generated, on the one hand, and the relying party, on the other (A/CN.9/493, para. 103).

Subparagraph (e) ("Certification service provider")

249. A concern was raised that it was not clear if the definition of "certification service provider" was consistent with draft article 8, paragraph 1 (b), which referred to "any person ... expected ... to provide services in support of electronic signatures" and with draft article 12, paragraph 1 (b), which referred to the "issuer". In response, it was generally agreed that both provisions could be understood, where appropriate, as referring to the certification service provider. As to whether the text of draft article 8, paragraph 1 (b), would need to be aligned more closely with the wording of the definition of "certification service provider" in draft article 2, subparagraph (e), the matter was referred to the drafting group.

Subparagraph (f) ("Relying party")

250. A concern was raised that it was not clear whether a person falling within the definition of "certification service provider" could also be covered by the definition of "relying party". In response, attention was drawn to paragraphs 139 and 150 of the draft Guide, which made it clear that, in certain circumstances, the notion of "relying party" might cover not only a third party but also the signatory or a certification service provider.

251. After discussion, the Commission approved the substance of draft article 2 and referred it to the drafting group.

Article 3: Equal treatment of signature technologies

252. The text of draft article 3 as considered by the Commission was as follows:

> "Nothing in this Law, except article 5, shall be applied so as to exclude, restrict or deprive of legal effect any method of creating an electronic signature that satisfies the requirements referred to in article 6 (1) or otherwise meets the requirements of applicable law."

253. The Commission approved the substance of draft article 3 and referred it to the drafting group.

Article 4: Interpretation

254. The text of draft article 4 as considered by the Commission was as follows:

> "(1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.
>
> "(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based."

255. The Commission approved the substance of draft article 4 and referred it to the drafting group.

Article 5: Variation by agreement

256. The text of draft article 5 as considered by the Commission was as follows:

> "The provisions of this Law may be derogated from or their effect may be varied by agreement, unless that agreement would not be valid or effective under applicable law."

257. The Commission approved the substance of draft article 5 and referred it to the drafting group.

Article 6: Compliance with a requirement for a signature

258. The text of draft article 6 as considered by the Commission was as follows:

> "(1) Where the law requires a signature of a person, that requirement is met in relation to a data message if an electronic signature is used which is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.
>
> "(2) Paragraph (1) applies whether the requirement referred to therein is in the form of an obligation or whether the law simply provides consequences for the absence of a signature.

"(3) An electronic signature is considered to be reliable for the purpose of satisfying the requirement referred to in paragraph (1) if:

"(a) The signature creation data are, within the context in which they are used, linked to the signatory and to no other person;

"(b) The signature creation data were, at the time of signing, under the control of the signatory and of no other person;

"(c) Any alteration to the electronic signature, made after the time of signing, is detectable; and

"(d) Where a purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.

"(4) Paragraph (3) does not limit the ability of any person:

"(a) To establish in any other way, for the purpose of satisfying the requirement referred to in paragraph (1), the reliability of an electronic signature; or

"(b) To adduce evidence of the non-reliability of an electronic signature.

"(5) The provisions of this article do not apply to the following: [...]"

259. The Commission approved the substance of draft article 6 and referred it to the drafting group.

Article 7: Satisfaction of article 6

260. The text of draft article 7 as considered by the Commission was as follows:

"(1) [*Any person, organ or authority, whether public or private, specified by the enacting State as competent*] may determine which electronic signatures satisfy the provisions of article 6.

"(2) Any determination made under paragraph (1) shall be consistent with recognized international standards.

"(3) Nothing in this article affects the operation of the rules of private international law."

261. The Commission approved the substance of draft article 7 and referred it to the drafting group.

Article 8: Conduct of the signatory

262. The text of draft article 8 as considered by the Commission was as follows:

"(1) Where signature creation data can be used to create a signature that has legal effect, each signatory shall:

"(a) Exercise reasonable care to avoid unauthorized use of its signature creation data;

"(b) Without undue delay, notify any person that may reasonably be expected by the signatory to rely on or to provide services in support of the electronic signature if:

"(i) The signatory knows that the signature creation data have been compromised; or

"(ii) The circumstances known to the signatory give rise to a substantial risk that the signature creation data may have been compromised;

"(c) Where a certificate is used to support the electronic signature, exercise reasonable care to ensure the accuracy and completeness of all material representations made by the signatory which are relevant to the certificate throughout its life-cycle, or which are to be included in the certificate.

"(2) A signatory shall be liable for its failure to satisfy the requirements of paragraph (1)."

263. Subject to its earlier deliberations with respect to draft article 8 (see above, paras. 212-222), the Commission approved the substance of the draft article and referred it to the drafting group.

Article 9: Conduct of the certification service provider

264. The text of draft article 9 as considered by the Commission was as follows:

"(1) Where a certification service provider provides services to support an electronic signature that may be used for legal effect as a signature, that certification service provider shall:

"(a) Act in accordance with representations made by it with respect to its policies and practices;

"(b) Exercise reasonable care to ensure the accuracy and completeness of all material representations made by it that are relevant to the certificate throughout its life-cycle, or which are included in the certificate;

"(c) Provide reasonably accessible means which enable a relying party to ascertain from the certificate:

"(i) The identity of the certification service provider;

"(ii) That the signatory that is identified in the certificate had control of the signature creation data at the time when the certificate was issued;

"(iii) That signature creation data were valid at or before the time when the certificate was issued;

"(d) Provide reasonably accessible means which enable a relying party to ascertain, where relevant, from the certificate or otherwise:

"(i) The method used to identify the signatory;

"(ii) Any limitation on the purpose or value for which the signature creation data or the certificate may be used;

"(iii) That the signature creation data are valid and have not been compromised;

"(iv) Any limitation on the scope or extent of liability stipulated by the certification service provider;

"(v) Whether means exist for the signatory to give notice pursuant to article 8 (1) (b);

"(vi) Whether a timely revocation service is offered;

"(e) Where services under subparagraph (d) (v) are offered, provide a means for a signatory to give notice pursuant to article 8 (1) (b) and, where services under subparagraph (d) (vi) are offered, ensure the availability of a timely revocation service;

"(f) Utilize trustworthy systems, procedures and human resources in performing its services.

"(2) A certification service provider shall be liable for its failure to satisfy the requirements of paragraph (1)."

265. Subject to its earlier deliberations with respect to draft article 9 (see above, paras. 223-230), the Commission approved the substance of the draft article and referred it to the drafting group.

Article 10: Trustworthiness

266. The text of draft article 10 as considered by the Commission was as follows:

"For the purposes of article 9 (1) (f), in determining whether, or to what extent, any systems, procedures and human resources utilized by a certification service provider are trustworthy, regard may be had to the following factors:

"(a) Financial and human resources, including existence of assets;

"(b) Quality of hardware and software systems;

"(c) Procedures for processing of certificates and applications for certificates and retention of records;

"(d) Availability of information to signatories identified in certificates and to potential relying parties;

"(e) Regularity and extent of audit by an independent body;

"(f) The existence of a declaration by the State, an accreditation body or the certification service provider regarding compliance with or existence of the foregoing; or

"(g) Any other relevant factor."

267. The Commission approved the substance of draft article 10 and referred it to the drafting group.

Article 11: Conduct of the relying party

268. The text of draft article 11 as considered by the Commission was as follows:

"A relying party shall bear the legal consequences of its failure to:

"(a) Take reasonable steps to verify the reliability of an electronic signature; or

"(b) Where an electronic signature is supported by a certificate, take reasonable steps to:

"(i) Verify the validity, suspension or revocation of the certificate; and

"(ii) Observe any limitation with respect to the certificate."

269. The Commission approved the substance of draft article 11, noting a suggestion that the title of the article should be aligned in all languages. The matter was referred to the drafting group.

Article 12: Recognition of foreign certificates and electronic signatures

270. The text of draft article 12 as considered by the Commission was as follows:

"(1) In determining whether, or to what extent, a certificate or an electronic signature is legally effective, no regard shall be had to:

"(a) The geographic location where the certificate is issued or the electronic signature created or used; or

"(b) The geographic location of the place of business of the issuer or signatory.

"(2) A certificate issued outside [*the enacting State*] shall have the same legal effect in [*the enacting State*] as a certificate issued in [*the enacting State*] if it offers a substantially equivalent level of reliability.

"(3) An electronic signature created or used outside [*the enacting State*] shall have the same legal effect in [*the enacting State*] as an electronic signature created or used in [*the enacting State*] if it offers a substantially equivalent level of reliability.

"(4) In determining whether a certificate or an electronic signature offers a substantially equivalent level of reliability for the purposes of paragraph (2) or (3), regard shall be had to recognized international standards and to any other relevant factors.

"(5) Where, notwithstanding paragraphs (2), (3) and (4), parties agree, as between themselves, to the use of certain types of electronic signatures or certificates, that agreement shall be recognized as sufficient for the purposes of cross-border recognition, unless that agreement would not be valid or effective under applicable law."

271. A proposal was made to delete the word "types" from article 12, paragraph 5, so that it would refer to "certain electronic signatures or certificates". That proposal was opposed on the basis that the Working Group had after extensive discussion specifically chosen to include this word and its removal could in fact narrow the scope of the paragraph.

272. Another proposal was made to delete article 12, paragraph 3. While some support was expressed, the Commission, after discussion, did not adopt that proposal.

273. After discussion, the Commission approved the substance of draft article 12 and referred it to the drafting group.

D. Consideration of the draft Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures

274. Having completed its deliberations with respect to the text of the draft Model Law, the Commission proceeded with a review of the draft Guide to Enactment prepared by the Secretariat (A/CN.9/493).

Paragraphs 135 and 159

275. A proposal was made (see A/CN.9/492/Add.2) to amend paragraphs 135 and 159 to reflect changes made to paragraph 69 as a result of the thirty-eighth session of the Working Group to limit the risk that insufficient attention might be given to industry-led voluntary standards processes.

276. The following text was proposed as a substitute for the second sentence of paragraph 135:

> "The word 'standards' should be interpreted in a broad sense, which would include voluntary industry practices and trade usages, which may assure the flexibility upon which commercial practice relies, promote open standards with a view to facilitating interoperability, and support the objective of cross-border recognition (as described in art. 12). Example texts include those emanating from such international organizations as the International Chamber of Commerce, the regional accreditation bodies operating under the aegis of the International Organization for Standardization (see A/CN.9/484, para. 66), the World Wide Web Consortium (W3C), as well as the work of UNCITRAL itself (including this Model Law and the UNCITRAL Model Law on Electronic Commerce)."

While some support was expressed in favour of the proposed amendment, it was generally felt that the existing text expressed adequate recognition of the role of voluntary standards. After discussion, it was agreed that inserting the words "voluntary standards (as described in para. 69 above)" after the words "industry practices and trade usages" in the second sentence of paragraph 135 would constitute an appropriate reference to such voluntary standards.

277. In the context of that discussion, another proposal was made that paragraph 135 should make reference to the European Electronic Signature Standardization Initiative (EESSI) as an example of a regional standardization initiative that should be taken into account when examining the standards applicable in the field of electronic signatures. While support was expressed for that proposal, it was pointed out that other such initiatives existed within other regional international organizations and that the Guide should not single out any such regional initiative. After discussion, it was agreed that paragraph 135 should refer in general terms to "regional standardization initiatives".

278. As to paragraph 159, a proposal was made to replace the current text by the following:

> "The notion of 'recognized international standard' should be interpreted broadly to cover voluntary international technical and commercial standards (i.e. market-driven standards) and standards and norms adopted by governmental or intergovernmental bodies (ibid., para. 49). 'Recognized international standard' may be statements of accepted technical, legal or commercial practices, whether developed by the public or private sector (or both), of a normative or interpretative nature, which are generally accepted as applicable internationally. Such standards may be in the form of requirements, recommendations, guidelines, codes of conduct, or statements of either best practices or norms (ibid., paras. 101-104). Voluntary international technical and commercial standards may form the basis of product specifications of engineering and design criteria and of consensus for research and development of future products. To assure the flexibility upon which such commercial practice relies, to promote open standards with a view to facilitating interoperability and to support the objective of cross-border recognition (as described in art. 12), States may wish to give due regard to the relationship between any specifications incorporated in or authorized by national regulations, and the voluntary technical standards process (see A/CN.9/484, para. 46)."

For the same reasons expressed in the context of the above discussion of paragraph 135 (see above, para. 43), it was agreed that inserting a reference to "voluntary standards (as described in para. 69 above)" at the end of the first sentence of paragraph 159 would constitute a sufficient reference to the practice of developing voluntary standards.

Paragraph 54

279. In addition to the mention currently found in paragraph 54 that "the issuing certification service provider's digital signature on the certificate can be verified by using the public key of the certification service provider listed in another certificate by another certification service provider", it was proposed that the following should be added after the second sentence of paragraph 54:

> "Among other possible ways of verifying the digital signature of the certification service provider, that digital signature can also be recorded in a certificate issued by that certification service provider itself, and sometimes referred to as a 'root certificate'".

Along the same lines, it was proposed that the end of the last sentence should read as follows: "to publish the

public key of the certification service provider (see A/CN.9/484, para. 41) or certain data pertaining to the root certificate (such as a 'digital fingerprint') in an official bulletin". While support was expressed in favour of the proposal, objections were made, based on the view that, in certain countries, there existed strong objections to implementations of root certificates in the commercial sphere, for reasons linked to the costs associated with the establishment of the structures necessary for such implementations and to a perception that such implementations might result in an overly regulated regime. Accordingly, it was proposed that those objections should also be mentioned in paragraph 54. After discussion, the Commission agreed that those various proposals should be reflected in paragraph 54.

Paragraph 62

280. With respect to subparagraph (3), it was proposed that the words "unique to both the signed message and a given private key" should be replaced with the words "unique to the signed message". The Commission adopted that proposal.

Paragraph 93

281. A proposal was made to replace the words "the identification of the signatory and the intent to sign" with wording based on the language used in paragraph 29 to describe the basic functions of a signature, namely, "to identify a person; and to associate that person with the content of a document". The Commission adopted that proposal.

Paragraph 153

282. A proposal was made to quote more extensively in paragraph 153 from the text of paragraph 31 of the report of the Working Group on the work of its thirty-seventh session (A/CN.9/483). In particular, it was pointed out that the indication that "the purpose of paragraph 2 was not to place foreign suppliers of certification services in a better position than domestic ones" should be reflected in the Guide. That proposal was adopted by the Commission.

283. Subject to any amendment that might be necessary to reflect the deliberations and decisions of the Commission at its current session with respect to both the text of the Model Law and the draft Guide itself and subject to any editorial changes that might be necessary to ensure consistency in terminology, the Commission found that the text of the draft Guide adequately implemented the Commission's intent to assist States in enacting and applying the Model Law and to provide guidance to other users of the Model Law. The Secretariat was requested to prepare the definitive version of the Guide and to publish it together with the text of the Model Law.

E. Adoption of the Model Law

284. The Commission, after consideration of the text of the draft Model Law as revised by the drafting group and the draft Guide to Enactment prepared by the Secretariat (A/CN.9/493), adopted the following decision at its 727th meeting, on 5 July 2001:

> "*The United Nations Commission on International Trade Law*,
>
> "*Recalling* its mandate under General Assembly resolution 2205 (XXI) of 17 December 1966 to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, and particularly those of developing countries, in the extensive development of international trade,
>
> "*Noting* that an increasing number of transactions in international trade are carried out by means of communication commonly referred to as 'electronic commerce', which involve the use of alternatives to paper-based forms of communication, storage and authentication of information,
>
> "*Recalling* the recommendation on the legal value of computer records adopted by the Commission at its eighteenth session, in 1985, and paragraph 5 (b) of General Assembly resolution 40/71 of 11 December 1985, in which the Assembly called upon Governments and international organizations to take action, where appropriate, in conformity with the recommendation of the Commission so as to ensure legal security in the context of the widest possible use of automated data processing in international trade,
>
> "*Recalling also* the UNCITRAL Model Law on Electronic Commerce adopted by the

Commission at its twenty-ninth session, in 1996, and complemented by an additional article 5 *bis* adopted by the Commission at its thirty-first session, in 1998,

"*Convinced* that the UNCITRAL Model Law on Electronic Commerce is of significant assistance to States in enabling or facilitating the use of electronic commerce through the enhancement of their legislation governing the use of alternatives to paper-based forms of communication and storage of information and through the formulation of such legislation where none currently exists,

"*Mindful* of the great utility of new technologies used for personal identification in electronic commerce and commonly referred to as 'electronic signatures',

"*Desirous* of building on the fundamental principles underlying article 7 of the UNCITRAL Model Law on Electronic Commerce with respect to the fulfilment of the signature function in an electronic environment,

"*Convinced* that legal certainty in electronic commerce will be enhanced by the harmonization of certain rules on the legal recognition of electronic signatures on a technologically neutral basis,

"*Believing* that the UNCITRAL Model Law on Electronic Signatures will significantly assist States in enhancing their legislation governing the use of modern authentication techniques and in formulating such legislation where none currently exists,

"*Being of the opinion* that the establishment of model legislation to facilitate the use of electronic signatures in a manner acceptable to States with different legal, social and economic systems could contribute to the development of harmonious international economic relations,

"1. *Adopts* the UNCITRAL Model Law on Electronic Signatures as it appears in annex II to the report of the United Nations Commission on International Trade Law on its thirty-fourth session,[7] together with the Guide to Enactment of the Model Law;

"2. *Requests* the Secretary-General to transmit the text of the UNCITRAL Model Law on Electronic Signatures, together with the Guide to Enactment of the Model Law, to Governments and other interested bodies;

"3. *Recommends* that all States give favourable consideration to the newly adopted UNCITRAL Model Law on Electronic Signatures, together with the UNCITRAL Model Law on Electronic Commerce adopted in 1996 and complemented in 1998, when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based forms of communication, storage and authentication of information."

Chapter V
Possible future work on electronic commerce

285. At the thirty-second session of the Commission, in 1999, various suggestions were made with respect to future work in the field of electronic commerce after completion of the Model Law on Electronic Signatures. It was recalled that, at the close of the thirty-second session of the Working Group, it had been proposed that the Working Group might wish to give preliminary consideration to undertaking the preparation of an international convention based on relevant provisions of the UNCITRAL Model Law on Electronic Commerce and of the draft model law on electronic signatures (A/CN.9/446, para. 212). The Commission was informed that interest had been expressed in a number of countries in the preparation of such an instrument.[10]

286. The attention of the Commission was drawn to a recommendation adopted on 15 March 1999 by the Centre for the Facilitation of Procedures and Practices for Administration, Commerce and Transport (CEFACT) of the Economic Commission for Europe (ECE).[11] That text recommended that UNCITRAL consider the actions necessary to ensure that references to "writing", "signature" and "document" in conventions and agreements relating to international trade allowed for electronic equivalents. Support was expressed for the preparation of an omnibus protocol to

amend multilateral treaty regimes to facilitate the increased use of electronic commerce.

287. Other items suggested for future work included: electronic transactional and contract law; electronic transfer of rights in tangible goods; electronic transfer of intangible rights; rights in electronic data and software (possibly in cooperation with the World Intellectual Property Organization (WIPO)); standard terms for electronic contracting (possibly in co-operation with the International Chamber of Commerce (ICC) and the Internet Law and Policy Forum); applicable law and jurisdiction (possibly in cooperation with the Hague Conference on Private International Law); and online dispute settlement systems.[12]

288. At its thirty-third session, in 2000, the Commission held a preliminary exchange of views regarding future work in the field of electronic commerce. The Commission focused its attention on three of the topics mentioned above. The first dealt with electronic contracting considered from the perspective of the United Nations Convention on Contracts for the International Sale of Goods (hereinafter referred to as "the United Nations Sales Convention" or "the Convention"). The second topic was online dispute settlement. The third topic was dematerialization of documents of title, in particular in the transport industry.

289. The Commission welcomed the proposal to consider further the possibility of undertaking future work on those topics. While no decision as to the scope of future work could be made until further discussion had taken place in the Working Group, the Commission generally agreed that, upon completing its current task, namely, the preparation of the draft Model Law on Electronic Signatures, the Working Group would be expected to examine, at its first meeting in 2001, some or all of the above-mentioned topics, as well as any additional topic, with a view to making more specific proposals for future work by the Commission. It was agreed that work to be carried out by the Working Group could involve consideration of several topics in parallel as well as preliminary discussion of the contents of possible uniform rules on certain aspects of the above-mentioned topics.[13]

290. The Working Group considered those proposals at its thirty-eighth session, in 2001, on the basis of a set of notes dealing with a possible convention to remove obstacles to electronic commerce in existing international conventions (A/CN.9/WG.IV/WP.89); dematerialization of documents of title (A/CN.9/WG.IV/WP.90); and electronic contracting (A/CN.9/WG.IV/WP.91).

291. The Working Group concluded its deliberations on future work by recommending to the Commission that work towards the preparation of an international instrument dealing with certain issues in electronic contracting be started on a priority basis. At the same time, it was agreed to recommend to the Commission that the Secretariat be entrusted with the preparation of the necessary studies concerning three other topics considered by the Working Group, namely: (a) a comprehensive survey of possible legal barriers to the development of electronic commerce in international instruments, including, but not limited to, those instruments already mentioned in the CEFACT survey; (b) a further study of the issues related to transfer of rights, in particular rights in tangible goods, by electronic means and mechanisms for publicizing and keeping a record of acts of transfer or the creation of security interests in such goods; and (c) a study discussing the UNCITRAL Model Law on International Commercial Arbitration, as well as the UNCITRAL Arbitration Rules, to assess their appropriateness for meeting the specific needs of online arbitration (A/CN.9/484, paras. 94-127).

292. There was wide support for the recommendations made by the Working Group, which were found to constitute a sound basis for future work by the Commission. The views varied, however, as regards the relative priority to be assigned to the topics. One line of thought was that a project aimed at removing obstacles to electronic commerce in existing instruments should have priority over the other topics, in particular over the preparation of a new international instrument dealing with electronic contracting. It was said that references to "writing", "signature", "document" and other similar provisions in existing uniform law conventions and trade agreements already created legal obstacles and generated uncertainty in international transactions conducted by electronic means. Efforts to remove those obstacles should not be delayed or neglected by attaching higher priority to issues of electronic contracting.

293. The prevailing view, however, was in favour of the order of priority that had been recommended by the Working Group (see para. 291). It was pointed out, in

that connection, that the preparation of an international instrument dealing with issues of electronic contracting and the consideration of appropriate ways for removing obstacles to electronic commerce in existing uniform law conventions and trade agreements were not mutually exclusive. The Commission was reminded of the common understanding reached at its thirty-third session that work to be carried out by the Working Group could involve consideration of several topics in parallel as well as preliminary discussion of the contents of possible uniform rules on certain aspects of the above-mentioned topics.[14]

294. There were also differing views regarding the scope of future work on electronic contracting, as well as the appropriate moment to begin such work. Pursuant to one view, the work should be limited to contracts for the sale of tangible goods. The opposite view, which prevailed in the course of the Commission's deliberations, was that the Working Group on Electronic Commerce should be given a broad mandate to deal with issues of electronic contracting, without narrowing the scope of the work from the outset. It was understood, however, that consumer transactions and contracts granting limited use of intellectual property rights would not be dealt with by the Working Group. The Commission took note of one of several preliminary working assumptions made by the Working Group that the form of the instrument to be prepared could be that of a stand-alone convention (although it was not possible for a final decision to be taken as to form). The future instrument should deal broadly with the issues of contract formation in electronic commerce (A/CN.9/484, para. 124), without creating any negative interference with the well-established regime of the United Nations Convention on Contracts for the International Sale of Goods (A/CN.9/484, para. 95), and without unduly interfering with the law of contract formation in general. In that connection, it was stated that the focus of the work should be restricted to international transactions. Broad support was given to the idea expressed in the context of the thirty-eighth session of the Working Group that, to the extent possible, the treatment of Internet-based sales transactions should not differ from the treatment given to sales transactions conducted by more traditional means (A/CN.9/484, para. 102).

295. As regards the timing of the work to be undertaken by the Working Group, there was support for commencing consideration of future work without delay during the third quarter of 2001. However, strong views were expressed that it would be preferable for the Working Group to await until the first quarter of 2002, so as to afford States sufficient time to hold internal consultations. The Commission took note of that suggestion and decided to revert to the issue in the course of its deliberations on its overall work programme and the proposed schedule of meetings of its Working Groups (see para. 425).

Chapter VI
Insolvency law

296. The Commission, at its thirty-second session in 1999, had before it a proposal by Australia (A/CN.9/462/Add.1) on possible future work in the area of insolvency law. That proposal had recommended that, in view of its universal membership, its previous successful work on cross-border insolvency and its established working relations with international organizations that have expertise and interest in the law of insolvency, the Commission was an appropriate forum for the discussion of insolvency law issues. The proposal urged that the Commission consider entrusting a working group with the development of a model law on corporate insolvency to foster and encourage the adoption of effective national corporate insolvency regimes.

297. Recognition was expressed in the Commission for the importance to all countries of strong insolvency regimes. The view was expressed that the type of insolvency regime that a country had adopted had become a "front-line" factor in international credit ratings. Concern was expressed, however, about the difficulties associated with work on an international level on insolvency legislation, which involved sensitive and potentially diverging socio-political choices. In view of those difficulties, the fear was expressed that the work might not be brought to a successful conclusion. It was said that a universally acceptable model law was in all likelihood not feasible and that any work needed to take a flexible approach that would leave options and policy choices open to States. While the Commission heard expressions of support for such flexibility, it was generally agreed that the Commission could not take a final decision on committing itself to establishing a working group to

develop model legislation or another text without further study of the work already being undertaken by other organizations and consideration of the relevant issues.

298. To facilitate that further study, the Commission decided to convene an exploratory session of a working group to prepare a feasibility proposal for consideration by the Commission at its thirty-third session. That session of the Working Group was held in Vienna from 6 to 17 December 1999.

299. At its thirty-third session, in 2000, the Commission noted the recommendation that the Working Group had made in its report (A/CN.9/469, para. 140) and gave the Working Group the mandate to prepare a comprehensive statement of key objectives and core features for a strong insolvency, debtor-creditor regime, including consideration of out-of-court restructuring, and a legislative guide containing flexible approaches to the implementation of such objectives and features, including a discussion of the alternative approaches possible and the perceived benefits and detriments of such approaches.

300. It was agreed that, in carrying out its task, the Working Group should be mindful of the work under way or already completed by other organizations, including the World Bank, the International Monetary Fund, the Asian Development Bank, the International Federation of Insolvency Professionals (INSOL International) and Committee J of the Section on Business Law of the International Bar Association (IBA). In order to obtain the views and benefit from the expertise of those organizations, the Secretariat, in cooperation with INSOL and IBA, organized the UNCITRAL/INSOL/IBA Global Insolvency Colloquium at Vienna, from 4 to 6 December 2000.

301. At its current session, the Commission had before it the report of the Colloquium (A/CN.9/495).

302. The Commission took note of the report with satisfaction and commended the work accomplished so far, in particular the holding of the Global Insolvency Colloquium and the efforts of coordination with the work carried out by other international organizations in the area of insolvency law. The Commission discussed the recommendations of the Colloquium, in particular with respect to the form that the future work might take and interpretation of the mandate given to the Working Group by the Commission at its thirty-third session.

303. In terms of the mandate given to the Working Group, the Commission was generally of the view that it should be interpreted broadly to enable the Working Group to develop a work product that could reflect the elements mentioned in the mandate for inclusion (see para. 299 above and A/CN.9/495, para. 13). As to the possible form of future work, it was reaffirmed that a model law on substantive features of an insolvency regime would be neither desirable nor feasible, given the complexity and variety of issues involved in insolvency law and the disparity of approaches taken within the various legal systems. The view was widely shared that the work should ensure as much flexibility as possible, while at the same time maximizing utility. Concern was expressed that while a legislative guide could provide the necessary flexibility, it might result in a product that was too general and too abstract to provide the required guidance. Accordingly, it was suggested that the Working Group should bear in mind the need to be as specific as possible in developing its work and in that connection it was suggested that model legislative provisions, even if only addressing some of the issues to be included in the guide, should be included as far as possible.

304. The view was widely expressed that the work should take the form of a legislative guide. It was pointed out that a product issued in that form might prove very useful not only for countries that did not have efficient and effective insolvency regimes and needed to develop such a regime, but also for countries that had undertaken or were to undertake the process of modernizing and reviewing their national systems. The view was expressed that, in developing the guide, the Working Group should be mindful of the goal of furthering trade and promoting commerce, not just of the goal of harmonization of existing laws.

305. It was suggested that the three key areas for organizing the material to be included in the guide, as outlined in the report of the Colloquium (A/CN.9/495, paras. 30-33), provided an appropriate format for the essential elements and that work should proceed on that basis. As to the substantive contents of the guide, a number of suggestions were made, including that, in developing the legislative guide, the Working Group should bear in mind a number of key principles and objectives such as respecting issues of public policy;

enhancing the coordination role of courts; establishing a special regime for public claims; recognizing the priority of reorganization over liquidation; preserving the operation of the business and employment; guaranteeing salaries; respecting the role of courts in controlling the insolvency representatives; providing for equal treatment of creditors and ensuring transparency of collective proceedings. It was observed that those principles should not be interpreted as limiting the mandate given to the Working Group, but might usefully be taken into account by the Working Group for purposes of guidance and to avoid the legislative guide being overly general. It was suggested that either banks and financial institutions should remain outside the scope of the work or that a special regime should be maintained for those entities.

306. Other suggestions that received some support included the need to take account of a number of issues that had proved to be problems in international insolvency, such as the difficulty of collecting and disseminating information on companies that were the subject of insolvency proceedings, providing access for foreign creditors to make claims, equal treatment of foreign creditors and the treatment of late claims, especially where they might be made by foreign creditors. A further issue noted was problems associated with the granting of credit and the fact that cases were often encountered where insufficient care in decisions to grant credit proved, though apparently remote, to be one of the causes of insolvency. It was recalled that the UNCITRAL Model Law on Cross-Border Insolvency already addressed a number of those problems. It was noted that while some of those issues might also be relevant in the context of the current project to develop a legislative guide, there was no intention that the current project should change or amend the Model Law in any way.

307. The Commission noted the importance of training of insolvency professionals and the judiciary to the efficient and orderly functioning of an insolvency regime and heard of the work being undertaken to further that important objective by other international organizations.

308. After discussion, the Commission confirmed that the mandate given to the Working Group at the thirty-third session of the Commission should be widely interpreted to ensure an appropriately flexible work product, which should take the form of a legislative guide.

Chapter VII
Settlement of commercial disputes

309. At its thirty-second session, in 1999, the Commission had before it a note entitled "Possible future work in the area of international commercial arbitration" (A/CN.9/460).[15] Welcoming the opportunity to discuss the desirability and feasibility of further development of the law of international commercial arbitration, the Commission generally considered that the time had come to assess the extensive and favourable experience with national enactments of the UNCITRAL Model Law on International Commercial Arbitration (1985), as well as the use of the UNCITRAL Arbitration Rules and the UNCITRAL Conciliation Rules, and to evaluate in the universal forum of the Commission the acceptability of ideas and proposals for improvement of arbitration laws, rules and practices.[16]

310. The Commission entrusted the work to one of its working groups, which it named the Working Group on Arbitration, and decided that the priority items for the Working Group should be conciliation,[17] requirement of written form for the arbitration agreement,[18] enforceability of interim measures of protection[19] and possible enforceability of an award that had been set aside in the State of origin.[20]

311. At its thirty-third session, in 2000, the Commission had before it the report of the Working Group on Arbitration on the work of its thirty-second session (A/CN.9/468). The Commission took note of the report with satisfaction and reaffirmed the mandate of the Working Group to decide on the time and manner of dealing with the topics identified for future work. Several statements were made to the effect that, in general, the Working Group, in deciding the priorities of the future items on its agenda, should pay particular attention to what was feasible and practical and to issues where court decisions left the legal situation uncertain or unsatisfactory. Topics that were mentioned in the Commission as potentially worthy of consideration, in addition to those which the Working Group might identify as such, were the meaning and effect of the more-favourable-right provision of article VII of the 1958 Convention on the Recognition

and Enforcement of Foreign Arbitral Awards (hereinafter referred to as "the New York Convention") (A/CN.9/468, para. 109 (k)); raising claims in arbitral proceedings for the purpose of set-off and the jurisdiction of the arbitral tribunal with respect to such claims (para. 107 (g)); freedom of parties to be represented in arbitral proceedings by persons of their choice (para. 108 (c)); residual discretionary power to grant enforcement of an award notwithstanding the existence of a ground for refusal listed in article V of the 1958 New York Convention (para. 109 (i)); and the power by the arbitral tribunal to award interest (para. 107 (j)). It was noted with approval that, with respect to "online" arbitrations (i.e. arbitrations in which significant parts or even all of arbitral proceedings were conducted by using electronic means of communication) (para. 113), the Working Group on Arbitration would cooperate with the Working Group on Electronic Commerce. With respect to the possible enforceability of awards that had been set aside in the State of origin (para. 107 (m)), the view was expressed that the issue was not expected to raise many problems and that the case law that gave rise to the issue should not be regarded as a trend.[21]

312. At its current session, the Commission took note with appreciation of the reports of the Working Group on the work of its thirty-third and thirty-fourth sessions (A/CN.9/485 and A/CN.9/487, respectively). The Commission commended the Working Group for the progress accomplished so far regarding the three main issues under discussion, namely, the requirement of the written form for the arbitration agreement, the issues of interim measures of protection and the preparation of a model law on conciliation.

313. With regard to the requirement of written form for the arbitration agreement, the Commission noted that the Working Group had considered the draft model legislative provision revising article 7, paragraph 2, of the UNCITRAL Model Law on International Commercial Arbitration (see A/CN.9/WG.II/WP.113, paras. 13 and 14) and a draft interpretative instrument regarding article II, paragraph 2, of the New York Convention (para. 16). Consistent with a view expressed in the context of the thirty-fourth session of the Working Group (A/CN.9/487, para. 30), concern was expressed as to whether a mere reference to arbitration terms and conditions or to a standard set of arbitration rules available in written form could satisfy the written form requirement. It was stated that such a reference should not be taken as satisfying the form requirement since the written text being referred to was not the actual agreement to arbitrate but rather a set of procedural rules for carrying out the arbitration (i.e. a text that would most often exist prior to the agreement and result from the action of persons that were not parties to the actual agreement to arbitrate). It was pointed out that, in most practical circumstances, it was the agreement of the parties to arbitrate that should be required to be made in a form that was apt to facilitate subsequent evidence of the intent of the parties. In response to that concern, it was generally felt that, while the Working Group should not lose sight of the importance of providing certainty as to the intent of the parties to arbitrate, it was also important to work towards facilitating a more flexible interpretation of the strict form requirement contained in the New York Convention, so as not to frustrate the expectations of the parties when they agreed to arbitrate. In that respect, the Commission took note of the possibility that the Working Group examine further the meaning and effect of the more-favourable-right provision of article VII of the New York Convention.

314. With regard to the issues of interim measures of protection, the Commission noted that the Working Group had considered a draft text for a revision of article 17 of the UNCITRAL Model Law on International Commercial Arbitration and the text of paragraph 1 (a) (i) of a draft new article prepared by the Secretariat for addition to that Model Law (A/CN.9/WG.II/WP.113, para. 18). The Working Group was requested to continue its work on the basis of revised draft provisions to be prepared by the Secretariat.

315. With regard to conciliation, the Commission noted that the Working Group had considered articles 1-16 of the draft model legislative provisions (A/CN.9/WG.II/WP.113/Add.1). It was generally felt that work on those draft model legislative provisions could be expected to be completed by the Working Group at its next session. The Commission requested the Working Group to proceed with the examination of those provisions on a priority basis, with a view to the instrument being presented in the form of a draft model law for review and adoption by the Commission at its thirty-fifth session, in 2002.

Chapter VIII
Monitoring the implementation of the 1958 New York Convention

316. It was recalled that the Commission, at its twenty-eighth session, in 1995, had approved the project, undertaken jointly with Committee D of IBA, aimed at monitoring the legislative implementation of the New York Convention.[22] It was stressed that the purpose of the project, as approved by the Commission, was limited to that aim and, in particular, that its purpose was not to monitor individual court decisions applying the Convention. In order to be able to prepare a report on the subject, the Secretariat had sent to the States parties to the Convention a questionnaire relating to the legal regime in those States governing the recognition and enforcement of foreign awards.

317. It was noted that, as at the beginning of the current session of the Commission, the Secretariat had received 59 replies to the questionnaire (of a current total of 125 States parties).

318. The Commission repeated its appeal to States parties to the Convention that had not yet replied to the questionnaire to do so as soon as possible or, to the extent necessary, to inform the Secretariat about any new developments since their previous replies to the questionnaire. The Secretariat was requested to prepare, for a future session of the Commission, a note presenting the findings based on the analysis of the information gathered.

Chapter IX
Possible future work on transport law

319. When considering future work in the area of electronic commerce, following the adoption of the UNCITRAL Model Law on Electronic Commerce at its twenty-ninth session, in 1996,[23] the Commission considered a proposal to include in its work programme a review of current practices and laws in the area of the international carriage of goods by sea, with a view to establishing the need for uniform rules where no such rules existed and with a view to achieving greater uniformity of laws.[24]

320. At that session, the Commission had been informed that existing national laws and international conventions had left significant gaps regarding issues such as the functioning of bills of lading and seaway bills, the relation of those transport documents to the rights and obligations between the seller and the buyer of the goods and the legal position of the entities that provided financing to a party to the contract of carriage. Some States had provisions on those issues, but the fact that those provisions were disparate and that many States lacked them constituted an obstacle to the free flow of goods and increased the cost of transactions. The growing use of electronic means of communication in the carriage of goods further aggravated the consequences of those fragmentary and disparate laws and also created the need for uniform provisions addressing the issues particular to the use of new technologies.[24]

321. It was then suggested that the Secretariat should be requested to solicit views and suggestions on those difficulties not only from Governments but in particular from the relevant intergovernmental and non-governmental organizations representing the various interests in the international carriage of goods by sea.[25] It was stated that an analysis of those views and suggestions would enable the Secretariat to present, at a future session, a report that would allow the Commission to take an informed decision as to the desirable course of action.[25]

322. Several reservations were expressed with regard to that suggestion.[26] One reservation was that the issues to be covered were numerous and complex, which would strain the limited resources of the Secretariat. Priority should instead be given to other topics that were, or were about to be, put on the agenda of the Commission. Furthermore, it was said that the continued coexistence of different treaties governing the liability in the carriage of goods by sea and the slow process of adherence to the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules), made it unlikely that adding a new treaty to the existing ones would lead to greater harmony of laws. Indeed, there was some danger that the disharmony of laws would increase.[27]

323. In addition, it was said that any work that would include the reconsideration of the liability regime was likely to discourage States from adhering to the Hamburg Rules, which would be an unfortunate result.

It was stressed that, if an investigation were to be carried out, it should not cover the liability regime. It was, however, stated in reply that the review of the liability regime was not the main objective of the suggested work; rather, what was necessary was to provide modern solutions to the issues that either were not adequately dealt with or were not dealt with at all in treaties.[27]

324. Having regard to those differing views, the Commission did not include the consideration of the suggested issues on its agenda at that stage. Nevertheless, it decided that the Secretariat should be the focal point for gathering information, ideas and opinions as to the problems that arose in practice and possible solutions to those problems. It was also agreed that such information-gathering should be broadly based and should include, in addition to Governments, the international organizations representing the commercial sectors involved in the carriage of goods by sea, such as the International Maritime Committee (CMI), ICC, the International Union of Marine Insurance (IUMI), the International Federation of Freight Forwarders Associations (FIATA), the International Chamber of Shipping (ICS) and the International Association of Ports and Harbors.[28]

325. At its thirty-first session, in 1998, the Commission heard a statement on behalf of CMI to the effect that it welcomed the invitation to cooperate with the Secretariat in soliciting views of the sectors involved in the international carriage of goods and in preparing an analysis of that information. It was stated that that analysis would allow the Commission to take an informed decision as to the desirable course of action.[29] Strong support was expressed at that session for the exploratory work being undertaken by CMI and the Secretariat. The Commission expressed its appreciation to CMI for its willingness to embark on that important and far-reaching project, for which few or no precedents existed at the international level.[30]

326. At the thirty-second session of the Commission, in 1999, it was reported on behalf of CMI that a CMI working group had been instructed to prepare a study on a broad range of issues in international transport law with the aim of identifying the areas where unification or harmonization was needed by the industries involved.[31] In undertaking the study, it had been realized that the industries involved were extremely interested in pursuing the project and had offered their technical and legal knowledge to assist in that endeavour. Based on that favourable reaction and the preliminary findings of the CMI working group, it appeared that further harmonization in the field of transport law would greatly benefit international trade. The CMI working group had found a number of issues that had not been covered by the current unifying instruments. Some of those issues were regulated by national laws that were not internationally harmonized. Evaluated in the context of electronic commerce, that lack of harmonization became even more significant. It was reported that the CMI working group had identified numerous interfaces between the different types of contracts involved in international trade and transport of goods (such as sales contracts, contracts of carriage, insurance contracts, letters of credit, freight forwarding contracts and a number of other ancillary contracts). The CMI working group intended to clarify the nature and function of those interfaces and to collect and analyse the rules currently governing them. That exercise would at a later stage include a re-evaluation of principles of liability to determine their compatibility with a broader area of rules on the carriage of goods.[31]

327. At that session, it was also reported that the CMI working group had sent a questionnaire to all CMI member organizations covering a large number of legal systems. The intention of CMI was, once the replies to the questionnaire had been received, to create an international subcommittee to analyse the data and find a basis for further work towards harmonizing the law in the area of international transport of goods. The Commission had been assured that CMI would provide it with assistance in preparing a universally acceptable harmonizing instrument.[32]

328. Also at that session, the Commission expressed its appreciation to CMI for having acted upon its request for cooperation and requested the Secretariat to continue to cooperate with CMI in gathering and analysing information. The Commission was looking forward to receiving a report at a future session presenting the results of the study with proposals for future work.[33]

329. At its thirty-third session, in 2000, the Commission had had before it a report of the Secretary-General on possible future work in transport law (A/CN.9/476), which described the progress of the work carried out by CMI in cooperation with the

Secretariat. It had also heard an oral report on behalf of CMI. In cooperation with the Secretariat, the CMI working group had launched an investigation based on a questionnaire covering different legal systems addressed to the CMI member organizations. It was also noted that, at the same time, a number of round-table meetings had been held in order to discuss features of the future work with international organizations representing various industries. Those meetings showed the continued support for and interest of the industry in the project.

330. It was reported that, pursuant to the receipt of replies to the questionnaire, CMI had created an international subcommittee with a view to analysing the information and finding a basis for further work towards harmonizing the law in the area of international transport of goods. It was also reported that the enthusiasm encountered so far in the industry and the provisional findings about the areas of law that needed further harmonization made it likely that the project would be eventually transformed into a universally acceptable harmonizing instrument.

331. In the course of the discussions in the CMI subcommittee, it had been noted that although bills of lading were still used, especially where a negotiable document was required, the actual carriage of goods by sea sometimes represented only a relatively short leg of an international transport of goods. In the container trade, even a port-to-port bill of lading would involve receipt and delivery at some point not directly connected with the loading onto, or discharge from, the ocean vessel. Moreover, in most situations it was not possible to take delivery alongside the vessel. Furthermore, where different modes of transport were used, there were often gaps between mandatory regimes applying to the various transport modes involved. It had been proposed, therefore, that in developing an internationally harmonized regime covering the relationships between the parties to the contract of carriage for the full duration of the carrier's custody of the cargo, issues that arose in connection with activities that were integral to the carriage agreed to by the parties and that took place before loading and after discharge should also be considered, as well as issues that arose under shipments where more than one mode of transport was contemplated. It was noted that the emphasis of the work, as originally conceived, had been on the review of areas of law governing the transport of goods that had not previously been covered by international agreements. However, it had been increasingly felt that the current broad-based project should be extended to include an updated liability regime that would complement the terms of the proposed harmonizing instrument.

332. Several statements were made in the Commission to the effect that the time had come for active pursuit of harmonization in the area of the carriage of goods by sea, that increasing disharmony in the area of international carriage of goods was a source of concern and that it was necessary to provide a certain legal basis to modern contract and transport practices. It was also observed that the carriage of goods by sea was increasingly part of a warehouse-to-warehouse operation and that factor should be borne in mind in conceiving future solutions. Approval was expressed for a concept of work that would extend beyond liability issues and would deal with the contract of carriage so as to facilitate the export-import operation, which included the relationship between the seller and the buyer (and possible subsequent buyers) as well as the relationship between the parties to the commercial transaction and providers of financing. It was recognized that such a broad approach would involve some re-examination of the rules governing the liability for loss of or damage to goods.

333. In the context of the thirty-third session of the Commission, a transport law colloquium, organized jointly by the Secretariat and CMI, was held in New York on 6 July 2000. The purpose of the colloquium was to gather ideas and expert opinions on problems that arose in the international carriage of goods, in particular the carriage of goods by sea, identifying issues in transport law on which the Commission might wish to consider undertaking future work and, to the extent possible, suggesting possible solutions. It allowed a broad range of interested organizations and representatives of both carrier and shipper industry bodies to provide their views on possible areas where transport law was in need of reform.

334. A majority of speakers acknowledged that existing national laws and international conventions left significant gaps regarding issues such as the functioning of a bill of lading and a seaway bill, the relationship of those transport documents to the rights and obligations between the seller and the buyer of the goods and the legal position of the entities that provide financing to a party to a contract of carriage. There was

general consensus that, with the changes wrought by the development of multimodalism and the use of electronic commerce, the transport law regime was in need of reform to regulate all transport contracts, whether applying to one or more modes of transport and whether the contract was made electronically or in writing. Some issues raised for consideration in any reform process included formulating more exact definitions of the roles, responsibilities, duties and rights of all parties involved and clearer definitions of when delivery was assumed to occur; rules for dealing with cases where it was not clear at which leg of the carriage cargo had been lost or damaged; identifying the terms or liability regime that should apply as well as the financial limits of liability; and the inclusion of provisions designed to prevent the fraudulent use of bills of lading.

335. At that session, the Commission welcomed the fruitful cooperation between CMI and the Secretariat. Several statements were made to the effect that it was necessary throughout the preparatory work to involve other interested organizations, including those representing the interests of cargo owners. The Commission requested the Secretariat to continue to cooperate actively with CMI with a view to presenting, at the next session of the Commission, a report identifying issues in transport law on which the Commission might undertake future work.

336. It was noted with appreciation that a CMI International Subcommittee, in which all maritime law association members of CMI were invited to participate, had met four times during 2000 to consider the scope and possible substantive solutions for a future instrument on transport law (27 and 28 January, 6 and 7 April, 7 and 8 July and 12 and 13 October). A number of other non-governmental organizations participated as observers in those meetings, including FIATA, the Baltic and International Maritime Council (BIMCO), ICC, ICS, IUMI and the International Group of P&I Clubs. The tasks of the Subcommittee, as laid down by CMI in consultation with the Secretariat, had been to consider in what areas of transport law that were not at present governed by international liability regimes greater international uniformity might be achieved; to prepare an outline of an instrument designed to bring about uniformity of transport law and then to draft provisions to be incorporated into the proposed instrument, including provisions relating to liability. In addition, the Subcommittee was to consider how the instrument might accommodate other forms of carriage associated with carriage by sea. The draft outline instrument and a paper on door-to-door issues were discussed at the major CMI international conference held in Singapore from 12 to 16 February 2001. It was reported that, pursuant to the discussion at the conference, the Subcommittee would continue its work with a view to identifying solutions that were likely to attract agreement among the industries involved in the international carriage of goods by sea.

337. At its thirty-fourth session, the Commission had before it a report of the Secretary-General (A/CN.9/497) that had been prepared pursuant to that request by the Commission.

338. The report that was before the Commission summarized the considerations and suggestions that had resulted so far from the discussions in the CMI International Subcommittee. The details of possible legislative solutions were not presented because they were currently being worked on by the Subcommittee. The purpose of the report was to enable the Commission to assess the thrust and scope of possible solutions and decide on how it wished to proceed. The issues described in the report that would have to be dealt with in the future instrument included the following: the scope of application of the instrument, period of responsibility of the carrier, obligations of the carrier, liability of the carrier, obligations of the shipper, transport documents, freight, delivery to the consignee, right of control of parties interested in the cargo during carriage, transfer of rights in goods, the party that had the right to bring an action against the carrier and time bar for actions against the carrier.

339. The report suggested that consultations that the Secretariat had been conducting pursuant to the mandate it received from the Commission in 1996 indicated that work could usefully commence towards an international instrument, possibly having the nature of an international treaty, that would modernize the law of carriage, take into account the latest developments in technology, including electronic commerce, and eliminate legal difficulties in the international transport of goods by sea that were identified by the Commission. Considerations of possible legislative solutions by CMI were making good progress and it was expected that a preliminary text containing drafts of possible solutions for a future legislative instrument,

with alternatives and comments, would be prepared by December 2001.

340. It was suggested that the Commission should commence consideration of the feasibility, scope and content of a future legislative instrument in 2002 by entrusting the work to a working group.

341. The Commission heard a report from a representative of CMI that the work of its Subcommittee had received broad support from its members. In consultations undertaken by CMI, the importance of that project had been acknowledged along with the necessity of ensuring that its objectives were compatible with electronic commerce and the need to clarify further the relationship between shipper, carrier and consignee even where such relationships were already covered by existing international regimes. The Commission expressed its gratitude to CMI for the intensive and productive consultations conducted so far.

342. The view was expressed that it was important to focus on issues that were not dealt with by existing international conventions. In particular, it was suggested that it was not necessary to develop new rules relating to issues such as the liability of the carrier already covered by international treaties, as it would be uncertain whether States would accept a new regime. Furthermore, it was suggested that the regime to be developed should cover only port-to-port transport operations and that it should not extend to cover inland transport or attempt to deal with door-to-door transport operations. A contrary view expressed was that existing international conventions often dealt with issues in an inconsistent manner and that there were gaps between the existing texts and problems that arose because different States were parties to different instruments. A view was expressed that the Commission should not deal with door-to-door issues without undertaking a comprehensive analysis of existing national and international multimodal regimes. It was reported on behalf of UNCTAD that it had recently initiated studies on multimodal transport matters that showed that, even though the United Nations Convention on Multimodal Transport of Goods had not entered into force and was adhered to by a small number of States, it had influenced national laws and regional harmonization efforts on the subject.[34] It was stated that, whilst the work proposed to be done by UNCITRAL was of interest to UNCTAD, it was also of some concern in that it was considered that it would be inappropriate to extend the rules governing the carriage of goods by sea to inland transport.

343. An alternative view was that work should not be limited to issues that were not covered by existing international conventions and that the scope of work as outlined in the report on possible future work in transport law (A/CN.9/497) was appropriate, as it included liability issues and contemplated, subject to further more detailed studies, the possibility of dealing with issues that arose beyond the sea leg of a transport contract in the context of door-to-door operations. Wide support was expressed for such a broad mandate to be given to a working group.

344. It was reported that the secretariat of ECE, in cooperation with government experts and representatives of various industries involved in the international carriage of goods, was studying possibilities for reconciliation and harmonization of civil liability regimes governing multimodal transport. Hearings convened by ECE had shown that so far there existed no consensus on the action to be taken at the international level in that field. Experts representing mainly maritime interests as well as freight forwarders and insurers generally did not favour the preparation of an international mandatory legal regime on civil liability covering multimodal operations. However, experts representing road and rail transport industries, combined transport operators, transport customers and shippers felt that work towards harmonization of the existing liability regimes governing various modes of transport should be pursued urgently and that a single international civil liability regime governing multimodal transport operations was required. It was noted that ECE continued its exploratory work on multimodal transport and was ready to share its experience in the field with the Commission. A view was expressed, however, that the Commission should, at that stage, avoid multimodal issues, given the difficulty of merging practices in the four modes of transportation.

345. After discussion, the Commission decided to establish a working group to consider issues as outlined in the report on possible future work (A/CN.9/497). It was expected that the Secretariat would draft for the working group a preliminary working document containing drafts of possible solutions for a future legislative instrument, with alternatives and comments, which was under

preparation by CMI. As to the scope of the work, the decision was that it should include issues of liability. The Commission also decided that the considerations in the working group should initially cover port-to-port transport operations; however, the working group would be free to study the desirability and feasibility of dealing also with door-to-door transport operations, or certain aspects of those operations, and, depending on the results of those studies, recommend to the Commission an appropriate extension of the working group's mandate. It was stated that solutions embraced in the United Nations Convention on the Liability of Transport Terminals in International Trade (Vienna, 1991) shall also be carefully taken into account. It was also agreed that the work would be carried out in close cooperation with interested intergovernmental organizations involved in work on transport law (such as UNCTAD, ECE and other regional commissions of the United Nations and the Organization of American States (OAS)), as well as international non-governmental organizations.

Chapter X
Possible future work on security interests

346. The Commission considered a note by the Secretariat on the issue of security interests (A/CN.9/496). It was recalled that, at its thirty-third session in 2000, the Commission had considered a report on current activities in the field of security interests (A/CN.9/475). That report not only referred to the Commission's earlier interest and work on security interests, dating back to the late 1970s, and to the developments that had occurred in that area during the previous 25 years, but also contained suggestions as to areas for possible future work.

347. At the same session, it was agreed that security interests was an important subject and had been brought to the attention of the Commission at the right time, in particular in view of the close link of security interests with the work of the Commission on insolvency law. It was widely felt that modern secured credit laws could have a significant impact on the availability and the cost of credit and thus on international trade. It was also widely felt that modern secured credit laws could alleviate the inequalities in the access to lower-cost credit between parties in developed countries and parties in developing countries, and in the share such parties had in the benefits of international trade. A note of caution was struck, however, in that regard to the effect that such laws needed to strike an appropriate balance in the treatment of privileged, secured and unsecured creditors so as to become acceptable to States. Furthermore, it was stated that, in view of the divergent policies of States, a flexible approach aimed at the preparation of a set of principles with a guide, rather than a model law, would be advisable.[35]

348. Also at the same session, a number of suggestions were made as to the scope of the work. One suggestion was that a uniform law should be prepared to deal with security interests in investment property (e.g. stocks, bonds, swaps and derivatives). It was stated that such securities, which were held, as entries in a register, by an intermediary and, physically, by a depository institution, were important instruments on the basis of which vast amounts of credit were extended not only by commercial banks to their clients but also by central banks to commercial banks. It was also observed that, in view of the globalization of financial markets, a number of jurisdictions were normally involved whose laws were often incompatible with each other or even inadequate to address the relevant problems. As a result, a great deal of uncertainty existed as to whether investors owning securities and financiers extending credit and taking a pledge in the securities had a right in rem and were protected, in particular, in the case of the insolvency of an intermediary. It was also pointed out that a great deal of uncertainty arose even as to the law applicable to security interests in investment property held by an intermediary and that the fact that the Hague Conference on Private International Law planned to address that matter indicated both its importance and its urgency. In that regard, it was observed that work by UNCITRAL could be perfectly compatible with and could usefully supplement any work undertaken by the Hague Conference, in particular in view of the inherent limitations of private international law rules in matters of mandatory law and public policy.[36]

349. Also at that session, the Commission had requested the Secretariat to prepare a study that would discuss in detail the relevant problems in the field of secured credit law and the possible solutions for consideration by the Commission at its thirty-fourth

session, in 2001, and decision as to possible future work.

350. With reference to the study, a statement was made on behalf of the secretariat of the International Institute for the Unification of Private Law (Unidroit) in which it was noted that, having spent resources on research and drafting model provisions on secured transactions law, the Unidroit secretariat was sensitive to the importance of that area of the law. It was further stated that since the Unidroit secretariat had done work in the area defined in the study as "security interests over investment securities", and in view of the need to make all possible efforts to avoid duplication of work, it appeared advisable for the Commission to avoid undertaking work on that topic. The hope was expressed that the omission of reporting on other ongoing developments in the same field of law would be corrected in future documentation. In particular, reference was made to the draft Unidroit Convention on International Interests in Mobile Equipment, which dealt with many of the same issues and which was expected to be completed in November 2001, as well as a model national law on secured transactions, also expected to be completed in November 2001 by OAS.

351. After expressing its appreciation for the study prepared by the Secretariat, the Commission commenced its discussion. Diverging views were expressed as to the advisability of work on security interests being undertaken by the Commission. However the prevailing view was that such work should be undertaken in view of the beneficial economic impact of a modern secured credit law. It was stated that experience had shown that deficiencies in that area could have major negative impacts on a country's economic and financial system. It was also stated that an effective and predictable legal framework had both short- and long-term macroeconomic benefits. In the short term, namely, when countries faced crises in their financial sector, an effective and predictable legal framework was necessary, in particular in terms of enforcement of financial claims, to assist the banks and other financial institutions in controlling the deterioration of their claims through quick enforcement mechanisms and to facilitate corporate restructuring by providing a vehicle that would create incentives for interim financing. In the longer term, a flexible and effective legal framework for security rights could serve as a useful tool to increase economic growth. Indeed, without access to affordable credit, economic growth, competitiveness and international trade could not be fostered, with enterprises being prevented from expanding to meet their full potential.

352. On the other hand, it was stated that the study showed that the topic of security interests was a very complex and complicated one to deal with. The concern was expressed that the study did not make clear what impact the result of any efforts in that area of the law would have on domestic law. It was observed that the study did not discuss how the work by UNCITRAL would be coordinated with other organizations dealing with related issues. It was, therefore, suggested to defer any decision on whether work should be undertaken in that field of law, as it was too early to be able to take an informed decision, in particular since the study did not examine all the relevant issues in depth.

353. Those concerns were not shared on various grounds. On the one hand, it was stated that the study did offer the basis for an informed decision to be taken during the current session. On the other, it was observed that not taking any action with respect to that area of the law would mean wasting an opportunity to help promote the extension of lower-cost credit. It was widely felt that several institutions had attested to the need for the creation of a legal regime relating to security interests. It was stated that a similar regime would benefit not only those countries which would like to participate in international commerce and did not have rules on secured transactions, but also those countries which had outdated regimes. By way of example, several countries were mentioned that had recently adopted new rules on security interests and in which the flow of low-cost credit had increased. It was, therefore, suggested that a working group should be established to deal with security interests. That proposal gained wide support.

354. Noting that there was wide support for the establishment of a working group, the Commission focused on the scope of the work to be undertaken by such a group. It was suggested that the working group should not deal with security interests over investment securities since that was an area in which Unidroit had an interest. The Commission agreed with that suggestion.

355. It was also suggested that the working group should not deal with security interests over intellectual property rights as there was less need for work in that

area and that work in that area therefore should not have priority. It was also stated that, at that time, the intersection of intellectual property law, contract law and secured financing law had proved a difficult subject in other forums and currently consensus was lacking on the matter. It was stated that, if at a later stage it was decided that work be done in that area, any efforts regarding the development of a regime on security interests over intellectual property rights would have to be coordinated with other organizations, such as WIPO, which had particular experience with intellectual property law. There was sufficient support in the Commission for that suggestion too.

356. The suggestion was also made that the focus of the working group should be security interests in goods involved in a commercial activity. The need for an efficient regime regarding security interests in inventory of goods used in manufacturing or destined for sale was stressed in particular. That suggestion was objected to on the grounds that that focus would be too restricted. It was pointed out that the study also suggested a wider focus, as it focused in chapter IV on "security rights in general". In response, it was stated that chapter IV focused less on the objects that could serve as collateral than on the issues to be addressed when dealing with security rights over objects other than those warranting a special regime, such as intellectual property rights and investment securities. It was further stated that the focus on the aforementioned goods would allow a result to be achieved more quickly than if the focus were security rights in general. Furthermore, it was stated that the decision to restrict the focus of the working group to goods involved in a commercial activity, including inventory of goods used in manufacturing or destined for sale, would not exclude the possibility of extending the scope of that work at a later stage.

357. Various statements were made concerning the form of the work to be undertaken. It was felt that a model law might be too rigid and that the instrument to be developed should be very flexible. The important issue was to achieve the goals underlying the creation of a regime on security interests. It was stated that those goals could be achieved by resorting to various forms to meet the different needs. It was therefore suggested that the working group draft a set of core principles for an efficient legal regime governing secured transactions to be inserted into a legislative guide (containing flexible approaches to the implementation of such principles and a discussion of alternative approaches possible and of the benefits and detriments of such approaches). It was further suggested that the legislative guide should also contain, where feasible, model legislative provisions.

358. After discussion, the Commission decided to establish a working group with the mandate to develop an efficient legal regime for security rights in goods involved in a commercial activity, including inventory, to identify the issues to be addressed, such as the form of the instrument, the exact scope of the assets that can serve as collateral, the perfection of security, the degree of formalities to be complied with, the need for an efficient and well balanced enforcement regime, the scope of the debt that may be secured, means of publicizing the existence of security rights, limitations, if any, on the creditors entitled to the security right, the effects of bankruptcy on the enforcement of security right and the certainty and predictability of the creditor's priority over competing interests.

359. The Commission, aware of the financial implications of holding a two- or three-day colloquium on security interests, emphasized the importance of that subject matter and the need to consult with practitioners and organizations having expertise in the area. It therefore recommended that a colloquium be held before the next session of the Working Group on Security Interests (see para. 425 (f)). It was anticipated that the costs of such a colloquium would be absorbed in the existing regular budget of the United Nations.

Chapter XI
Possible future work on privately financed infrastructure projects

360. It was recalled that, at its thirty-third session, the Commission adopted the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, consisting of the legislative recommendations (A/CN.9/471/Add.9), with the amendments adopted by the Commission at that session and the notes to the legislative recommendations (A/CN.9/471/Add.1-8), which the Secretariat was authorized to finalize in the light of the deliberations of the Commission.[37] It was noted that the Guide had since been published in all official languages.

361. It was also recalled that, at that session, the Commission also considered a proposal for future work in that area. It was suggested that, although the Legislative Guide would be a useful reference for domestic legislators in establishing a legal framework favourable to private investment in public infrastructure, it would nevertheless be desirable for the Commission to formulate more concrete guidance in the form of model legislative provisions or even in the form of a model law dealing with specific issues.[38]

362. After consideration of that proposal, the Commission had decided that the question of the desirability and feasibility of preparing a model law or model legislative provisions on selected issues covered by the Legislative Guide should be considered by the Commission at its thirty-fourth session. In order to assist the Commission in making an informed decision on the matter, the Secretariat was requested to organize a colloquium, in cooperation with other interested international organizations or international financial institutions, to disseminate knowledge about the Legislative Guide.[39]

363. The Colloquium on Privately Financed Infrastructure: Legal Framework and Technical Assistance was organized with the co-sponsorship and organizational assistance of the Public-Private Infrastructure Advisory Facility (PPIAF), a multi-donor technical assistance facility aimed at helping developing countries improve the quality of their infrastructure through private sector involvement. It was held in Vienna from 2 to 4 July 2001, during the second week of the thirty-fourth session of the Commission.

364. At its thirty-fourth session, the Commission took note with appreciation of the results of the Colloquium as summarized in a note by the Secretariat (A/CN.9/488) and expressed its gratitude to the PPIAF for its financial and organizational support. The Commission also expressed its appreciation to the various international intergovernmental and non-governmental organizations represented and to the speakers at the Colloquium. Finally, the Commission agreed that the proceedings of the Colloquium should be published by the United Nations.

365. The Commission endorsed the recommendation made at the Colloquium that the Secretariat, in coordination with other organizations, undertake joint initiatives to ensure widespread awareness of the Guide.

366. Various views were expressed as to the desirability and feasibility of further work by the Commission in the field of privately financed infrastructure projects.

367. There was wide support for the view that there was a significant demand for model legislation providing for more specific guidance, especially in developing countries and in countries with economies in transition. In that connection, it was suggested that the Legislative Guide should be implemented by way of drafting a set of core model provisions dealing with some of the substantive issues identified and dealt with in the Legislative Guide. It was pointed out that, while the Guide was in itself a valuable tool in assisting domestic legislators in the process of enacting or reviewing legislation in that field, the effectiveness of that process would be significantly increased if model legislative provisions were available. It was also noted that the prompt undertaking of such further work would take advantage of the vast and significant expertise gathered throughout the process that had led to the adoption of the Legislative Guide and would allow it to be easily and effectively achieved within a reasonable amount of time. Finally, it was observed that there was no inconsistency between undertaking such further work, on the one hand, and undertaking efforts to promote awareness and dissemination of the Legislative Guide, on the other.

368. A concern that appeared to be widely shared was that the excessive proximity between the time of the adoption of the Legislative Guide and the decision to undertake further work in the same field could adversely affect the considerable and valuable work that had led to the adoption of the Guide, ultimately reducing its impact. It was observed that the flexible approaches reflected in the Legislative Guide already provided sufficient guidance to legislators wishing to use it as a template while in the process of enacting or reviewing national laws. A further view was that no further significant guidance was to be expected from the drafting of a limited set of model legislative provisions, since the need to refer to the recommendations contained in the Guide would remain unaffected. Accordingly, it was suggested that consideration of the issue of desirability of further work should be deferred to a later stage, in order to allow

legislators to become more familiar with the existence and the contents of the Guide and to test its utility in practice. A further view was that such deferral might also prove useful since it would provide an opportunity for accurately identifying the issues to which harmonization efforts should actually be devoted.

369. After considering the different views that were expressed, the Commission agreed that a working group should be entrusted with the task of drafting core model legislative provisions in the field of privately financed infrastructure projects. As to the possible contents of such model provisions, a proposal was that the project should focus on the phase of the selection of the concessionaire. The Commission was of the view that, if further work in the field of privately financed infrastructure projects was to be accomplished within a reasonable time, it was essential to carve out a specific area from among the many issues dealt with in the Legislative Guide. Accordingly, it was agreed that the first session of such a working group should identify the specific issues on which model legislative provisions, possibly to become an addendum to the Legislative Guide, could be formulated.

Chapter XII
Enlargement of the membership of the Commission

370. The Commission noted that, in paragraph 13 of its resolution 55/151 of 12 December 2000, the General Assembly had requested the Secretary-General to submit to it at its fifty-sixth session a report on the implications of increasing the membership of the Commission and had invited Member States to submit their views. It was also noted that, pursuant to a note verbale of 25 January 2001, some 30 States had submitted comments. Furthermore, it was noted that, in order to give States an opportunity to express their views and possibly to formulate a recommendation to the General Assembly, the Secretariat had prepared a note on the subject (A/CN.9/500). Taking note with appreciation of the background information contained in the note, the Commission noted that as far as servicing of conferences was concerned there was little impact of an increase in the membership to quantify. In particular, it was noted that no impact was foreseen in interpretation, translation of pre-session and post-session documentation and meetings servicing, since cost was fixed irrespective of the number of members of the Commission. It was also noted that, as far as reproduction of in-session documentation was concerned, the impact was not expected to be large enough to have any financial implications. Furthermore, it was noted that all the States that had submitted comments were in favour of the enlargement of the Commission.

371. It was generally agreed that the membership of the Commission should be enlarged. It was stated that such an enlargement of the Commission would ensure that the Commission remained representative of all legal traditions and economic systems, in particular in view of the substantial increase in the membership of the Organization. In addition, it was observed that an enlargement of the Commission would assist the Commission in better implementing its mandate by drawing on a pool of experts from an increased number of countries and by enhancing the acceptability of its texts. It was also stated that such an enlargement would adequately reflect the increased importance of international trade law for economic development and the preservation of peace and stability. Moreover, it was said that such an enlargement of the Commission would foster participation of those States which could not justify the human and other resources necessary for the preparation and attendance of the meetings of the Commission and its working groups unless they were members. It was also stated that an enlargement would facilitate coordination with the work of other organizations active in the unification of private law to the extent that the overlap between the membership of the Commission and the membership of those organizations would be increased. It was also observed that an enlargement of the Commission would not affect its efficiency or its working methods or, in particular, the participation as observers of non-member States and international organizations, whether governmental or non-governmental, active in the field of international trade law or the principle of reaching decisions by consensus without a formal vote.

372. The concern was expressed, however, that actual participation might not increase substantially if the necessary steps were not taken to provide assistance to delegates of developing countries. In order to address that concern, the suggestion was made that efforts to increase the voluntary contributions to the Trust Fund set up to assist delegates of developing countries in participating in meetings of the Commission and its

working groups should be stepped up. The Commission endorsed that suggestion.

373. The Commission next considered the size of the increase in its membership. Differing views were expressed, ranging from 48 to 72 member States. The view was also expressed that the exact number to be recommended to the General Assembly should be left to the Secretariat to determine on the understanding that the Sixth Committee of the General Assembly would have to make a final decision. A common theme in all the views expressed was the need to make the Commission a more representative body of the membership of the Organization, without affecting its efficiency or its working methods. The prevailing view was in favour of increasing the membership to 72, in particular, since such an increase could result in maintaining the current proportions between regional groups.

374. However, the concern was expressed that such an increase might be excessive and, to the extent that not all members would be able to attend, might not lead to increased attendance. One delegation expressed the view that, in making a decision regarding the size of the increase in membership, the possible impact of such a decision on other organs of the United Nations should be taken into account. That delegation stated that doubling the number of member States might set a precedent that might be difficult to follow for other organs of the United Nations. The concern was also expressed that, with the change in its working methods decided by the Commission at the current session, such an increase might inadvertently result in reducing the efficiency of the Commission. In response to those views and concerns, it was observed that at the current session 74 States were represented and that fact had not affected the efficiency of the Commission, as the adoption of two major texts indicated. It was also stated that efficiency would not necessarily be reduced merely because the membership would be doubled. It was also widely felt that, in order to avoid raising political concerns about proportions of representation of regional groups, the current proportions should be preserved. The Commission decided, therefore, to recommend to the General Assembly that the Commission's membership be doubled and that regional groups be given as many seats as they currently had. The Commission also decided to recommend to the Assembly that it elect the new members as soon as possible, determining the terms of office of the new members in such a way as to preserve the practice of renewing the Commission's membership every three years. Regional groups were encouraged to conduct consultations in advance of the fifty-sixth session of the General Assembly and to agree on candidates for the new seats. At the close of the discussion, one delegation recalled its reservations regarding the size of the increase (as recommended in para. 375) and stated that the issue needed to be discussed further in the context of the Sixth Committee.

375. At its 236th meeting on 11 July 2001, the Commission adopted the following recommendation to the General Assembly:

> "*The United Nations Commission on International Trade Law*,
>
> "*Having considered* a note by the Secretariat,[40] prepared with a view to assisting the Commission in formulating a recommendation for the General Assembly on the possible increase of membership of the Commission,
>
> "*Recalling* General Assembly resolution 2205 (XXI) of 17 December 1966, by which the Assembly established the Commission and its mandate of furthering the progressive harmonization and unification of the law of international trade and pursuant to which the Commission is to bear in mind the interests of all peoples, and particularly those of developing countries, in the extensive development of international trade,
>
> "*Being satisfied* with the practice of inviting States not members of the Commission and relevant intergovernmental and international non-governmental organizations to participate as observers in sessions of the Commission and its working groups and to take part in the formulation of texts by the Commission, as well as with the practice of reaching decisions by consensus without a formal vote,
>
> "*Considering* that the primary consequence of membership in the Commission may be to encourage States to be represented at meetings of the Commission and its working groups, that representatives of States members of the Commission may be more likely to be drawn from among persons of eminence in the field of

the law of international trade as called for by the General Assembly in its resolution 2205 (XXI), and that membership in the Commission may stimulate interest in the work of the Commission and better justify the dedication of human and other resources to preparation for and attendance at meetings,

"*Observing* that the considerable number of States that have participated as observers and made valuable contributions to the work of the Commission indicates that there exists an interest in active participation in the Commission beyond the current thirty-six States that are members of the Commission,

"*Stressing* the importance of the work of the Commission for developing countries and countries with economies in transition, and being concerned about the inconsistent and less than optimal incidence of expert representation from developing countries at sessions of the Commission and its working groups during recent years, owing in part to inadequate resources to finance the travel of such experts,

"*Reaffirming* the importance of the Trust Fund established to provide travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General,

"*Appealing* to Governments, relevant bodies of the United Nations system, organizations, institutions and individuals to consider taking measures to increase their voluntary contributions to the Trust Fund in order to ensure full participation by States members of the Commission in the sessions of the Commission and its working groups,

"*Being informed* that the impact of an increase in membership of the Commission on the secretariat services required to facilitate the work of the Commission would not be material enough to quantify and that therefore the increase would have no financial implications,

"*Recommends* that the General Assembly approve an increase of the membership of the Commission from the current thirty-six States to seventy-two and, maintaining the current proportion between the regional groups, approve the following distribution of the additional seats: eighteen from the Group of African States, fourteen from the Group of Asian States, ten from the Group of Eastern European States, twelve from the Group of Latin American and Caribbean States and eighteen from the Group of Western European and Other States, and elect the new members as soon as possible."

Chapter XIII
Working methods of the Commission

376. In connection with its deliberations on the implications of increasing its membership (see paras. 370-375), the Commission decided to review its current working methods with a view to exploring ways to make the best possible use of the resources available to it. The Commission agreed to use as a basis for its deliberations a note that had been prepared by the Secretariat to that effect (A/CN.9/499).

377. That note contained an overview of topics currently under consideration by the Commission and topics that had been proposed for future work by the Commission. The note also contained a summary review of the current working methods of the Commission and its working groups and suggestions for their review. In the note it was pointed out that, with a total entitlement of only six working group sessions every year, an increase in the number of projects handled by the Commission would mean that normally only one annual session of a working group could be devoted to each project. Given the overall limitation on the conference time to which each subsidiary body of the General Assembly was entitled, it was unlikely that more meeting time could be allocated to the Commission.

378. Against that background the Commission considered the following proposals for review of its working methods: (a) increasing the number of working groups to a total of six, each of which would hold two annual sessions of one week only; or (b) entrusting each working group with two different topics during their sessions (i.e. one per week) or arranging for two working groups to share the same two-week meeting period, one session being held in the

first week and the other during the second week (i.e. two sessions back-to-back).

379. The Commission welcomed the proposals for reviewing its working methods. Such a review was considered necessary in view of the increasing workload of the Commission and the possibility of enlargement of its membership. However, several delegations also expressed the concern that member States might find it increasingly difficult to devote resources to participating at the Commission's work in six different projects at the same time. The concern was expressed that the Commission's work might suffer because working groups would have less time available for deliberations, with the consequence that results might be achieved later. It was further said that servicing six different working groups placed an additional burden on the secretariat of the Commission and that progress in the Commission's work might suffer unless the resources available to its secretariat were significantly increased. The Commission was, therefore, urged to establish clearly the relative priority of each of its projects and to allow for them to be carried out at a varying pace.

380. As to the two basic options under consideration, the Commission expressed its preference for entrusting each working group with two different topics during their sessions (i.e. one per week) or arranging for two working groups to share the same two-week meeting period, one session being held in the first week and the other during the second week (i.e. two sessions back-to-back). The Commission did not favour the option of all six topics being dealt with separately, by holding two one-week sessions per year for each topic, since that would result in additional travel costs both for delegations and the Secretariat, the latter as a result of the alternating pattern of meetings of the Commission and its working groups.

381. In order to make the best possible use of conference facilities available to the working groups, the Commission agreed that working groups could hold substantive deliberations during the first eight half-day meetings (for example, from Monday to Thursday), with a draft report on the entire period being prepared by the Secretariat for adoption at the tenth and last meeting of a working group (on Friday afternoon). The Commission acknowledged that, under that option, no extensive report could be prepared on deliberations held during the ninth meeting (Friday morning). Some delegations were of the view that the last substantive discussion could be left unreported on, or that the working groups could adopt the remaining portions of the report at the beginning of its next session, as was the practice in some organizations, or it might be published later by the Secretariat as its own account of the proceedings. However, the prevailing view within the Commission was that it was important for the working groups to adopt the entire report at the same session. For that purpose, the Commission agreed that the main conclusions reached by a working group at its ninth meeting should be summarily read out for the record by the Chairman at the tenth meeting and subsequently incorporated into the report.

382. The Commission expressed its understanding that the new arrangements should be used in a flexible manner and that, depending on its relative priority, a working group could devote an entire two-week session to the consideration of only one topic, while other topics could be combined for consideration by a working group within a two-week period of meeting. In that context, every effort should be made to choose germane topics for successive consideration by a working group. With a view to making optimal use of conference time, the Commission invited delegations to resort to informal consultations prior to actual meetings, thus reserving conference time only for those issues which required extensive deliberation, both formal and informal, in the context of Commission and working group meetings.

383. The Commission was hopeful that the new working methods could address the increase in the Commission's work programme without lowering the high standards of professional care that had distinguished the work of the Commission and contributed so much to its high reputation. The Commission decided to review the practical application of the new working methods at a future session.

Chapter XIV
Case law on UNCITRAL texts

384. The Commission noted with appreciation the ongoing work under the system that had been established for the collection and dissemination of case law on UNCITRAL texts (CLOUT). In that regard, it was pointed out that, up to the current session of the Commission, 34 issues of CLOUT had been published,

dealing with 393 cases. It was noted that CLOUT was a most important means of promoting the uniform interpretation and application of UNCITRAL texts by enabling interested persons, such as judges, arbitrators, lawyers or parties to commercial transactions, to take into account decisions and awards of other jurisdictions when rendering their own judgements or opinions or adjusting their actions to the prevailing interpretation of those texts.

385. The Commission expressed appreciation to the national correspondents for their work in the collection of relevant decisions and arbitral awards and their preparation of case abstracts. It also expressed its appreciation to the Secretariat for compiling, editing, issuing and distributing the abstracts.

Chapter XV
Digest of United Nations Sales Convention case law: interpretation of texts

386. The Commission had before it a note by the Secretariat containing a proposal as to how to further implement the mandate to the Commission to promote the progressive harmonization and unification of the law of international trade, namely, by developing ways and means of ensuring the uniform interpretation and application of international conventions and uniform laws in that field (A/CN.9/498). It was recalled that, when the General Assembly gave the Commission its mandate, the Commission was instructed to implement it, inter alia, by promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade and by collecting and disseminating information on national legislation and modern developments, including case law, in the field of international trade.[41]

387. It was further recalled that, when the Commission decided in 1988 to establish the CLOUT system, it had also considered the desirability of establishing an editorial board, which, amongst other things, could undertake a comparative analysis of the collected decisions and report to the Commission on the state of application of the legal texts. Those reports could evidence the existence of uniformity or divergence in the interpretation of individual provisions of the legal texts, as well as gaps in the texts that might come to light in actual court practice. The Commission decided, however, not to establish the board at that time, but to reconsider the proposal in the light of experience gathered in the collection of decisions and the dissemination of information under the CLOUT system.[42]

388. The document prepared by the Secretariat for the discussion during the 34th session of the Commission submitted that it would be appropriate for the Commission to reconsider the question of how it should contribute to the uniform interpretation of the texts resulting from its work. Such reconsideration was considered to be timely, as evidenced by the fact that, since the establishment of the CLOUT system, 393 cases had been reported, including more than 250 on the United Nations Convention on Contracts for the International Sale of Goods. In the light of the fact that divergences in the interpretation of the Convention had been noted, it had been repeatedly suggested by users of that material that appropriate advice and guidance would be useful to foster a more uniform interpretation of the Convention. The preparation of an analytical digest of court and arbitration cases, identifying trends in interpretation, would be one way of providing such advice and guidance. In preparing the digest one possible way might be simply to note diverging case law for information purposes; alternatively, guidance as to the interpretation of the Convention might be provided, based in particular on the legislative history of the provision and the reasons underlying it (A/CN.9/498, para. 3).

389. The document submitted to the current session of the Commission summarized case law on articles 6 and 78 of the Convention and was intended to offer to the Commission an example of how court and arbitral decisions might be presented with a view to fostering uniform interpretation. In that paper it was suggested that the Commission should consider whether the Secretariat, in consultation with experts from the different regions, should prepare a complete digest of cases reported on the various articles of the Convention. If so, the Commission might wish to consider whether the approach taken in preparing the sample digest in the document under review, including the style of presentation and the level of detail, was appropriate (A/CN.9/498, para. 4).

390. In the note by the Secretariat it was suggested that the reasons for which the Commission might wish

to take steps to foster uniform interpretation of the Convention on Contracts for the International Sale of Goods applied similarly to the UNCITRAL Model Law on International Commercial Arbitration (1985). With respect to the Model Law, some 135 cases had been reported, with some unsettled or divergent trends noted. Against that background, it was suggested that the Commission might request the Secretariat to analyse the cases interpreting uniform provisions of the Model Law and to submit a digest of those cases to the Commission at a future session or to its Working Group on Arbitration so as to enable the Commission to decide whether any action, similar to that suggested above with respect of the Convention on Contracts for the International Sale of Goods, should be taken (A/CN.9/498, para. 5).

391. The Commission took note with appreciation of the document in general and, in particular, of the examples given as to how court and arbitral decisions might be presented with a view to fostering uniform interpretation. The Commission commended the Secretariat for its innovative approach towards the implementation of the mandate the Commission had received from the General Assembly to promote and ensure a uniform interpretation and application of international conventions. A widely shared view was that, given the amount of information gathered, the decision taken in 1988 should be reconsidered and that the document constituted a good starting point for discussion in that respect. It was suggested that the Secretariat should also explore whether other initiatives could be undertaken to assist the Commission in carrying out its mandate.

392. As to the contents of the document, it was suggested that the project should not only consider case law, but also existing legal writing. In respect of the drafting procedure of the digest, it was suggested that the Secretariat should avail itself of the network of national correspondents, as they were persons knowledgeable about CLOUT and its context. It was further suggested that the digest should not only have the goal of evidencing divergences in the case law of different countries or giving guidance as to the interpretation of uniform legal texts, but also to identify gaps in those texts. It would then be the task for the Commission to decide on how to deal with such gaps. It was further suggested that the project should be an ongoing one, in that it should be updated continually, as new cases emerged.

393. In response, some concerns were expressed. It was stated that it was not clear to whom the digest would be addressed, as the natural addressees of any UNCITRAL text were States. States, however, might not need a digest such as the one under consideration. As far as practitioners and judiciaries were concerned, it was felt that they did not need such a digest, as much literature existed that aimed at helping to understand the Convention on Contracts for the International Sale of Goods. In respect of the contents, it was suggested that the digest could be merely a compilation of differences in the interpretation of the Convention rather than a guide. In support of that view it was stated that if the digest to be drafted were to function as a guide, it would necessarily have to indicate preference for some views over others. It was felt that such an expression of preference might be read as a criticism of decisions taken by national courts, which was felt to be an inappropriate result.

394. With a view to alleviating some of the above-mentioned concerns, it was stated, for instance, that although it was true that much literature existed on the Convention on Contracts for the International Sale of Goods in some countries, there were countries where no such literature was available. It was also stated that any work done by UNCITRAL would have the advantage not only of being translated into the six official languages of the United Nations (and thus have a very wide reach), but also of taking a more international view than most existing commentaries and papers, which were drafted from a national point of view.

395. As it was observed that any decision taken by the Commission with respect to the digest would be subject to reconsideration at any future session, it was felt that the Secretariat should be given the mandate to continue to draft that digest. It was again pointed out that, in line with the sample provisions presented in the note by the Secretariat (A/CN.9/498), the digest should not criticize domestic case law. After discussion, the Commission requested the Secretariat to draft a digest on the entire Convention on Contracts for the International Sale of Goods. In doing so, the Secretariat should avail itself of the help of the network of national correspondents and avoid criticism of the decisions of national courts.

Chapter XVI
Training and technical assistance

396. The Commission had before it a note by the Secretariat (A/CN.9/494) setting forth the activities undertaken since its thirty-third session and indicating the direction of future activities being planned, in particular in view of the increase in the requests received by the Secretariat. It was noted that training and technical assistance activities were typically carried out through seminars and briefing missions, which were designed to explain the salient features of UNCITRAL texts and the benefits to be derived from their adoption by States.

397. It was reported that, since the previous session, the following seminars and briefing missions had been organized in 2000: Havana (22-26 May); Tashkent (16-19 October); Seoul (6-9 November); Beijing (13-16 November); Cairo (20-23 November). In addition to the participation of members of the Secretariat in a number of meetings convened by other organizations, it was also reported that a symposium had been held in cooperation with the Organization for the Unification of Business Law in Africa (OHADA) in Bologna, Italy (2 and 3 April 2001). The secretariat of the Commission reported that a number of requests had had to be turned down for lack of sufficient resources and that for the remainder of 2001 only some of the requests made by countries in Africa, Asia, Latin America and Eastern Europe could be met.

398. The Commission expressed its appreciation to the Secretariat for the activities undertaken since its previous session and emphasized the importance of the training and technical assistance programme for promoting awareness and the wider adoption of the legal texts it had produced. Training and technical assistance were particularly useful for developing countries lacking expertise in the areas of trade and commercial law covered by the work of UNCITRAL and the training and technical assistance activities of the Secretariat could play an important role in the economic integration efforts being undertaken by many countries.

399. The Commission noted the various forms of technical assistance that might be provided to States preparing legislation based on UNCITRAL texts, such as review of preparatory drafts of legislation from the point of view of UNCITRAL texts, preparation of regulations implementing such legislation and comments on reports of law reform commissions, as well as briefings for legislators, judges, arbitrators, procurement officials and other users of UNCITRAL texts as embodied in national legislation. The upsurge in commercial law reform represented a crucial opportunity for the Commission to further significantly the objectives of substantial coordination and acceleration of the process of harmonization and unification of international trade law, as envisaged by the General Assembly in its resolution 2205 (XXI) of 17 December 1966.

400. The Commission took note with appreciation of the contributions made by Canada, Cyprus, Finland, France, Greece, Mexico and Switzerland towards the seminar programme. It also expressed its appreciation to Austria, Cambodia, Cyprus, Kenya and Singapore for their contributions to the trust fund for granting travel assistance to developing countries that are members of UNCITRAL since the trust fund was established. The Commission furthermore expressed its appreciation to those other States and organizations which had contributed to its programme of training and assistance by providing funds or staff or by hosting seminars.

401. Stressing the importance of extrabudgetary funding for carrying out training and technical assistance activities, the Commission appealed once again to all States, international organizations and other interested entities to consider making contributions to the UNCITRAL trust funds so as to enable the secretariat of the Commission to meet the increasing demands in developing countries and newly independent States for training and assistance and to enable delegates from developing countries to attend UNCITRAL meetings. It was also suggested that the Secretariat should make efforts to actively seek contributions from donor countries and organizations, for instance by formulating concrete proposals for projects to support its training and technical assistance activities. It was noted that the Trust Fund for Symposia could not be used to finance technical assistance to Governments, which was regretted in view of the increasing need and demands on the Secretariat for such assistance. It was therefore suggested, and the Commission agreed, that the terms of reference of the UNCITRAL Trust Fund for Symposia should be amended so as make it possible to use resources from the Trust Fund to finance technical assistance activities undertaken by the Secretariat.

402. In view of the limited resources available to the Secretariat, whether from budgetary or extrabudgetary resources, strong concern was expressed that the Commission could not fully implement its mandate with regard to training and technical assistance. Concern was also expressed that, without effective cooperation and coordination between the Secretariat and development assistance agencies providing or financing technical assistance, international assistance might lead to the adoption of national laws that did not represent internationally agreed standards, including UNCITRAL conventions and model laws.

403. In order to ensure the effective implementation of its training and assistance programme and the timely publication and dissemination of its work, the Commission decided to recommend that the General Assembly consider requesting the Secretary-General to increase substantially both the human and the financial resources available to its secretariat.

Chapter XVII
Status and promotion of UNCITRAL texts

404. On the basis of a note by the Secretariat (A/CN.9/501), the Commission considered the status of the conventions and model laws emanating from its work, as well as the status of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). The Commission noted with pleasure the new action of States and jurisdictions subsequent to 7 July 2000 (date of the conclusion of the thirty-third session of the Commission) regarding the following instruments:

(a) Convention on the Limitation Period in the International Sale of Goods, concluded at New York on 14 June 1974, as amended by the Protocol of 11 April 1980. Number of States parties: 17;

(b) [Unamended] Convention on the Limitation Period in the International Sale of Goods (New York, 1974). New action by Yugoslavia; number of States parties: 24;

(c) United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules). New actions by Iceland and St. Vincent and the Grenadines; number of States parties: 28;

(d) United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). New actions by Iceland, St. Vincent and the Grenadines and Yugoslavia; number of States parties: 59;

(e) United Nations Convention on International Bills of Exchange and International Promissory Notes (New York, 1988). The Convention has two States parties; it requires eight additional adherences for entry into force;

(f) United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 1991). The Convention has two States parties; it requires three additional adherences for entry into force;

(g) United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995). The Convention has five States parties;

(h) Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). New actions by Albania, Honduras, St. Vincent and the Grenadines and Yugoslavia; number of States parties: 126;

(i) UNCITRAL Model Law on International Commercial Arbitration, 1985. New jurisdictions that have enacted legislation based on the Model Law: Belarus, Greece, Madagascar and Republic of Korea;

(j) UNCITRAL Model Law on International Credit Transfers, 1992;

(k) UNCITRAL Model Law on Procurement of Goods, Construction and Services, 1994;

(l) UNCITRAL Model Law on Electronic Commerce, 1996. New jurisdictions that have enacted legislation based on the Model Law: Ireland, Philippines, Slovenia and States of Jersey (Crown Dependency of the United Kingdom of Great Britain and Northern Ireland);

(m) UNCITRAL Model Law on Cross-Border Insolvency, 1997. New jurisdiction that has enacted legislation based on the Model Law: South Africa.

405. Appreciation was expressed for those legislative actions on the texts of the Commission. A request was directed to States that had enacted or were about to enact a model law prepared by the Commission, or

to inform the secretariat of the Commission thereof. Such information would be useful to other States in their consideration of similar legislative action.

406. Representatives and observers of a number of States reported that official action was being considered with a view to adherence to various conventions and to the adoption of legislation based on various model laws prepared by UNCITRAL, in particular the UNCITRAL Model Law on Cross-Border Insolvency.

407. It was noted that, despite the universal relevance and usefulness of those texts, a number of States had not yet enacted any of them. An appeal was directed to the representatives and observers who had been participating in the meetings of the Commission and its working groups to contribute, to the extent that they in their discretion deemed appropriate, to facilitating consideration by legislative organs in their countries of texts of the Commission.

Chapter XVIII
General Assembly resolution on the work of the Commission

408. The Commission took note with appreciation of General Assembly resolution 55/151 of 12 December 2000 on the report of the Commission on the work of its thirty-third session. In particular, the Commission noted with appreciation that, in paragraph 2 of the resolution, the Assembly had commended the Commission for the completion and adoption of the Legislative Guide on Privately Financed Infrastructure Projects, as well as for the important progress made in its work on receivables financing.

409. The Commission also noted with appreciation that, in paragraph 3 of resolution 55/151, the General Assembly had appealed to Governments that had not yet done so to reply to the questionnaire circulated by the Secretariat in relation to the legal regime governing the recognition and enforcement of foreign arbitral awards.

410. The Commission further noted with appreciation that, in paragraph 5 of resolution 55/151, the Assembly had reaffirmed the mandate of the Commission, as the core legal body within the United Nations system in activities in that field, and in that connection had called upon all bodies of the United Nations system and invited other international organizations to bear in mind the mandate of the Commission and the need to avoid duplication of effort and to promote efficiency, consistency and coherence in the unification and harmonization of international trade law, and had recommended that the Commission, through its secretariat, continue to maintain close cooperation with the other international organs and organizations, including regional organizations, active in the field of international trade law.

411. The Commission noted with appreciation the decision of the General Assembly, in paragraph 6 of resolution 55/151, to reaffirm the importance, in particular for developing countries, of the work of the Commission concerned with training and technical assistance in the field of international trade law, such as assistance in the preparation of national legislation based on legal texts of the Commission, and that, in paragraph 7, the Assembly had expressed the desirability for increased efforts by the Commission, in sponsoring seminars and symposia, to provide such training and assistance.

412. The Commission also noted with appreciation that, in paragraph 7 (b) of the resolution, the Assembly had appealed to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the UNCITRAL Trust Fund for Symposia and, where appropriate, to the financing of special projects. Furthermore, it was noted that, in paragraph 8, the Assembly had appealed to the United Nations Development Programme and other bodies responsible for development assistance, such as the International Bank for Reconstruction and Development and the European Bank for Reconstruction and Development, as well as to Governments in their bilateral aid programmes, to support the training and technical assistance programme of the Commission and to cooperate and coordinate their activities with those of the Commission (the Trust Fund was established pursuant to resolution 48/32 of 9 December 1993).

413. It was also appreciated that the General Assembly, in paragraph 9 of the resolution, had appealed to Governments, the relevant bodies of the

Member States in the sessions of the Commission and its working groups, to make voluntary contributions to the trust fund for travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General (for a recommendation by the Commission that the Assembly adjust the terms of reference of the trust fund so that resources in the fund might be used for technical assistance projects, see para. 401).

414. The Commission further noted with appreciation the decision of the General Assembly, in paragraph 10 of resolution 55/151, to continue, in the competent Main Committee during the fifty-fifth session of the Assembly, its consideration of granting travel assistance to the least developed countries that were members of the Commission, at their request and in consultation with the Secretary-General.

415. The Commission welcomed the request by the General Assembly, in paragraph 11 of the resolution, to the Secretary-General to strengthen the secretariat of the Commission within the bounds of the resources available so as to ensure and enhance the effective implementation of the programme of the Commission. In that connection, the Commission noted with appreciation initial steps taken in the direction of implementation of the request of the Assembly. However, the Commission noted that its secretariat had still fewer Professional staff than it had had when the Commission was established. It therefore recommended to the Assembly that, in view of the substantial increase in the workload of the Commission and its secretariat and also in view of the importance of trade law unification for economic development and therefore for peace and stability, it request the Secretary-General to intensify and expedite efforts to strengthen the secretariat of the Commission within the bounds of the resources available to the Organization.

416. The Commission also noted with appreciation that the General Assembly, in paragraph 12, had stressed the importance of bringing into effect the conventions emanating from the work of the Commission and that to that end it had urged States that had not yet done so to consider signing, ratifying or acceding to those conventions.

417. The Commission also noted that, in paragraph 13, the General Assembly had requested the Secretary-General to submit to it at its fifty-sixth session a report

the Commission, and had invited Member States to submit their views on that issue.

Chapter XIX
Coordination and cooperation

A. Asian-African Legal Consultative Organization

418. On behalf of the Asian-African Legal Consultative Organization (AALCO, formerly AALCC), it was stated that, in view of the importance AALCO attached to the Commission's work, at its fortieth annual session, it had considered the report of the Commission on the work of its thirty-third session[43] and had expressed its appreciation for the progress achieved by the Commission. AALCO welcomed the completion of the Legislative Guide on Privately Financed Infrastructure Projects. AALCO had taken note with interest and appreciation of the substantive work accomplished towards the finalization of a draft Convention on Assignment of Receivables in International Trade, which had the potential of increasing the availability of credit at more affordable rates. Furthermore, AALCO supported the Commission's work towards a Model Law on Electronic Signatures, in particular in view of the general acceptance with which the UNCITRAL Model Law on Electronic Commerce had been received. AALCO's interest in the work of the Commission on arbitration had been enhanced by the success of the regional arbitration centres in Cairo, Kuala Lumpur and Lagos. It was announced that a fourth arbitration centre in Tehran would become operational in the near future. Moreover, a number of members of AALCO had expressed an interest in the increase of the membership of the Commission.

B. Permanent Court of Arbitration

419. On behalf of the Permanent Court of Arbitration at The Hague, it was stated that the Court continued to follow with great interest the Commission's work and had expanded its related activities. The Court had recently prepared new arbitration and conciliation rules for use by States, intergovernmental organizations and private parties, as well as Rules for the Settlement of

Environment, adopted on 19 June 2001. Those rules were based on the UNCITRAL Arbitration and Conciliation Rules. Other new activities included international law seminars on topics such as air and space law, settlement of investment disputes and protection of the environment and mass claims settlement tribunals. Those activities were supplemented by a publication programme, which included seminar papers, in cooperation with Kluwer Law International, arbitration CD-ROMs and, in cooperation with the International Council for Commercial Arbitration (ICCA), the ICCA Yearbook Commercial Arbitration. In that connection, appreciation was expressed for the work of the secretariat of the Commission in making UNCITRAL texts available in CD-ROM form. The Court and ICCA, in cooperation with the UNCITRAL secretariat, continued analysing answers to the questionnaire sent to States in the context of the UNCITRAL/IBA project on the legislative implementation of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. It was announced that a first paper would be ready in the near future.

C. Southeast European Cooperative Initiative

420. On behalf of the Southeast European Cooperative Initiative (SECI), it was stated that SECI had been established in 1996 on the basis of the Points of Common E.U.-U.S. Understanding to develop a viable economic strategy for the region. SECI focused on cross-border projects in the area of infrastructure development, trade and transport issues, security, energy, environment and private sector development. SECI had also done work, in particular, on border crossing facilitation, transport infrastructure, interconnection of natural gas networks and development of interconnection of electric power systems, cleaning of rivers and lakes, combating cross-border crime, investment promotion and commercial arbitration and mediation. Furthermore, SECI projects were carried out by experts from participating and supporting States with technical support from ECE and other institutions, took into account in its activities texts elaborated by UNCITRAL and that it hoped to benefit from its technical assistance programme.

Chapter XX
Other business

A. Bibliography

421. The Commission noted with appreciation the bibliography of recent writings related to the work of the Commission (A/CN.9/502). The Commission stressed the importance for the bibliography to be as complete as possible and, for that reason, requested Governments, academic institutions, other relevant organizations and individual authors to send copies of such publications to the Secretariat.

B. Willem C. Vis International Commercial Arbitration Moot

422. It was noted that the Institute of International Commercial Law at Pace University School of Law, New York, had organized the eighth Willem C. Vis International Commercial Arbitration Moot in Vienna from 5 to 12 April 2001. In addition, it was noted that legal issues dealt with by the teams of students participating in the Moot had been based on the United Nations Convention on Contracts for the International Sale of Goods, the UNCITRAL Model Law on International Commercial Arbitration and the Arbitration Rules of the International Chamber of Commerce. Moreover, it was noted that, in the 2001 Moot, some 94 teams had participated from law schools in some 31 countries, involving about 550 students and about 240 arbitrators. It was also noted that the ninth Moot was to be held at Vienna from 22 to 28 March 2002.

423. The Commission expressed its appreciation to the Institute of International Commercial Law at Pace University School of Law for organizing the Moot and to the Secretariat for sponsoring it. It was widely felt that the Moot, with its broad international participation, was an excellent method of disseminating information about uniform law texts and teaching international trade law.

Chapter XXI
Date and place of future meetings

A. Thirty-fifth session of the Commission

424. It was decided that the Commission would hold its thirty-fifth session in New York from 10 to 28 June 2002.

B. Sessions of working groups

425. The Commission approved the following schedule of meetings for its working groups:

(a) Working Group I, scheduled to work on issues of privately financed infrastructure projects, is to hold its fourth session in Vienna for one week, from 24 to 28 September 2001;

(b) Working Group II, currently working on arbitration, is to hold its thirty-fifth session in Vienna for two weeks, from 19 to 30 November 2001, and its thirty-sixth session in New York for one week, from 4 to 8 March 2002, immediately before the thirty-ninth session of Working Group IV on electronic commerce (see subpara. (d) below);

(c) Working Group III, scheduled to work on issues of transport law, is to hold its ninth session in New York for two weeks, from 15 to 26 April 2002;

(d) Working Group IV, currently working on electronic commerce, is to hold its thirty-ninth session in New York for one week, from 11 to 15 March 2002, immediately after the thirty-sixth session of Working Group II on arbitration (see subpara. (b) above);

(e) Working Group V, currently working on insolvency, is to hold its twenty-fourth session in New York for two weeks, from 23 July to 3 August 2001, its twenty-fifth session at Vienna for two weeks, from 3 to 14 December 2001 and its twenty-sixth session in New York for one week, from 13 to 17 May 2002, immediately before the first session of Working Group VI on security interests (see subpara. (f) below);

(f) Working Group VI, scheduled to work on issues of security interests, is to hold its first session in New York for one week, from 20 to 24 May 2002, immediately after the twenty-sixth session of Working Group V on insolvency (see subpara. (e) above).

Notes

[1] Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of office of six years. Of the current membership, 19 were elected by the General Assembly at its fifty-second session, on 24 November 1997 (decision 52/314) and 17 at its fifty-fifth session, on 16 October 2000. Pursuant to resolution 31/99 of 15 December 1976, the term of office of those members elected by the Assembly at its fifty-second session will expire on the last day prior to the opening of the thirty-seventh session of the Commission, in 2004, while the term of office of those members elected at the fifty-fifth session will expire on the last day prior to the opening of the fortieth session of the Commission, in 2007.

[2] In accordance with a decision taken by the Commission at its first session, the Commission has three Vice-Chairmen, so that, together with the Chairman and the Rapporteur, each of the five groups of States listed in General Assembly resolution 2205 (XXI), sect. II, para. 1, will be represented on the bureau of the Commission (see the report of the United Nations Commission on International Trade Law on the work of its first session, *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16* (A/72/16), para. 14 (*Yearbook of the United Nations Commission on International Trade Law*, vol. I: 1968-1970 (United Nations publication, Sales No. E.71.V.1), part two, chap. I, sect. A)).

[3] *Official Records of the General Assembly, Fiftieth Session, Supplement No. 17* (A/50/17), paras. 374-381.

[4] Ibid., *Fifty-fifth Session, Supplement No. 17* (A/55/17), paras. 186-192.

[5] Ibid., paras. 50 and 74.

[6] See documents A/CN.9/472 and Add.1-5 and A/CN.9/490 and Add.1-5.

[7] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* (A/56/17).

[8] *Official Records of the General Assembly, Fifty-first Session, Supplement No. 17* (A/51/17), paras. 223 and 224.

[9] Ibid., *Fifty-second Session, Supplement No. 17* (A/52/17), paras. 249-251.

[10] Ibid., *Fifty-third Session, Supplement No. 17* (A/53/17, para. 209.

[11] The text of the recommendation to UNCITRAL is contained in document TRADE/CEFACT/1999/CRP.7. Its adoption by CEFACT is mentioned in the report of CEFACT on the work of its fiftieth session (TRADE/CEFACT/1999/19, para. 60).

[12] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 17* (A/54/17), paras. 315-318.

[13] Ibid., *Fifty-fifth Session, Supplement No. 17* (A/55/17), paras. 384-388.

[14] Ibid., para. 387.

[15] The note drew on ideas, suggestions and considerations expressed in different contexts, such as the New York Convention Day (*Enforcing Arbitration Awards under the New York Convention*, op. cit.), the Congress of the International Council for Commercial Arbitration, Paris, 3-6 May 1998 (*Improving the Efficiency of Arbitration Agreements and Awards: 40 Years of Application of the New York Convention, International Council for Commercial Arbitration Congress Series No. 9*, Kluwer Law International, 1999), and other international conferences and forums, such as the 1998 Freshfields lecture by Gerold Herrmann, "Does the world need additional uniform legislation on arbitration?" (*Arbitration International*, vol. 15, No. 3 (1999), p. 211).

[16] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 17* (A/54/17), para. 337.

[17] Ibid., paras. 340-343.

[18] Ibid., paras. 344-350.

[19] Ibid., paras. 371-373.

[20] Ibid., paras. 374 and 375.

[21] Ibid., *Fifty-fifth Session, Supplement No. 17* (A/55/17), para. 396.

[22] Ibid., *Fiftieth Session, Supplement No. 17* (A/50/17), paras. 401-404, and ibid., *Fifty-first Session, Supplement No. 17* (A/51/17), paras. 238-243.

[23] Ibid., *Fifty-first Session, Supplement No. 17* (A/51/17).

[24] Ibid., para. 210.

[25] Ibid., para. 211.

[26] Ibid., paras. 211-214.

[27] Ibid., para. 213.

[28] Ibid., para. 215.

[29] Ibid., *Fifty-third Session, Supplement No. 17* (A/53/17), para. 264.

[30] Ibid., para. 266.

[31] Ibid., *Fifty-fourth Session, Supplement No. 17* (A/54/17), para. 413.

[32] Ibid., para. 415.

[33] Ibid., para. 418.

[34] *Implementation of Multimodal Transport Rules*, report prepared by the UNCTAD Secretariat, UNCTAD/15DTE/TLB/2, 25 June 2001.

[35] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17* (A/55/17), para. 459.

[36] Ibid., para. 462.

[37] Ibid., paras. 195-368 and 372.

[38] Ibid., para. 375.

[39] Ibid., para. 379.

[40] A/CN.9/500.

[41] General Assembly resolution 2205 (XXI), part II, para. 8 (d) and (e); UNCITRAL Yearbook, Vol. 1: 1968-1970, part one, II.E.

[42] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17* (A/55/17), paras. 107-109.

[43] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17*).

Annex I

Draft Convention on the Assignment of Receivables in International Trade

Preamble

The Contracting States,

Reaffirming their conviction that international trade on the basis of equality and mutual benefit is an important element in the promotion of friendly relations among States,

Considering that problems created by uncertainties as to the content and the choice of legal regime applicable to the assignment of receivables constitute an obstacle to international trade,

Desiring to establish principles and to adopt rules relating to the assignment of receivables that would create certainty and transparency and promote the modernization of the law relating to assignments of receivables, while protecting existing assignment practices and facilitating the development of new practices,

Desiring also to ensure adequate protection of the interests of debtors in assignments of receivables,

Being of the opinion that the adoption of uniform rules governing the assignment of receivables would promote the availability of capital and credit at more affordable rates and thus facilitate the development of international trade,

Have agreed as follows:

Chapter I
Scope of application

Article 1
Scope of application

1. This Convention applies to:

(a) Assignments of international receivables and to international assignments of receivables as defined in this chapter, if, at the time of conclusion of the contract of assignment, the assignor is located in a

(b) Subsequent assignments, provided that any prior assignment is governed by this Convention.

2. This Convention applies to subsequent assignments that satisfy the criteria set forth in paragraph 1 (a) of this article, even if it did not apply to any prior assignment of the same receivable.

3. This Convention does not affect the rights and obligations of the debtor unless, at the time of conclusion of the original contract, the debtor is located in a Contracting State or the law governing the original contract is the law of a Contracting State.

4. The provisions of chapter V apply to assignments of international receivables and to international assignments of receivables as defined in this chapter independently of paragraphs 1 to 3 of this article. However, those provisions do not apply if a State makes a declaration under article 39.

5. The provisions of the annex to this Convention apply as provided in article 42.

Article 2
Assignment of receivables

For the purposes of this Convention:

(a) "Assignment" means the transfer by agreement from one person ("assignor") to another person ("assignee") of all or part of or an undivided interest in the assignor's contractual right to payment of a monetary sum ("receivable") from a third person ("the debtor"). The creation of rights in receivables as security for indebtedness or other obligation is deemed to be a transfer;

(b) In the case of an assignment by the initial or any other assignee ("subsequent assignment"), the person who makes that assignment is the assignor and the person to whom that assignment is made is the assignee.

Article 3
Internationality

A receivable is international if, at the time of conclusion of the original contract, the assignor and the debtor are located in different States. An assignment is international if, at the time of conclusion of the contract of assignment, the assignor and the assignee are located in different States.

Article 4
Exclusions

1. This Convention does not apply to assignments made:

(a) To an individual for his or her personal, family or household purposes;

(b) As part of the sale or change in the ownership or legal status of the business out of which the assigned receivables arose.

2. This Convention does not apply to assignments of receivables arising under or from:

(a) Transactions on a regulated exchange;

(b) Financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions;

(c) Foreign exchange transactions;

(d) Inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments;

(e) The transfer of security rights in, sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary;

(f) Bank deposits;

(g) A letter of credit or independent guarantee.

3. Nothing in this Convention affects the rights and obligations of any person under the law governing negotiable instruments.

4. Nothing in this Convention affects the rights and obligations of the assignor and the debtor under special laws governing the protection of parties to

5. Nothing in this Convention:

(a) Affects the application of the law of a State in which real property is situated to either:

(i) An interest in that real property to the extent that under that law the assignment of a receivable confers such an interest; or

(ii) The priority of a right in a receivable to the extent that under that law an interest in the real property confers such a right; or

(b) Makes lawful the acquisition of an interest in real property not permitted under the law of the State in which the real property is situated.

Chapter II
General provisions

Article 5
Definitions and rules of interpretation

For the purposes of this Convention:

(a) "Original contract" means the contract between the assignor and the debtor from which the assigned receivable arises;

(b) "Existing receivable" means a receivable that arises upon or before conclusion of the contract of assignment and "future receivable" means a receivable that arises after conclusion of the contract of assignment;

(c) "Writing" means any form of information that is accessible so as to be usable for subsequent reference. Where this Convention requires a writing to be signed, that requirement is met if, by generally accepted means or a procedure agreed to by the person whose signature is required, the writing identifies that person and indicates that person's approval of the information contained in the writing;

(d) "Notification of the assignment" means a communication in writing that reasonably identifies the assigned receivables and the assignee;

(e) "Insolvency administrator" means a person or body, including one appointed on an interim basis, authorized in an insolvency proceeding to administer

(f) "Insolvency proceeding" means a collective judicial or administrative proceeding, including an interim proceeding, in which the assets and affairs of the assignor are subject to control or supervision by a court or other competent authority for the purpose of reorganization or liquidation;

(g) "Priority" means the right of a person in preference to the right of another person and, to the extent relevant for such purpose, includes the determination whether the right is a personal or a property right, whether or not it is a security right for indebtedness or other obligation and whether any requirements necessary to render the right effective against a competing claimant have been satisfied;

(h) A person is located in the State in which it has its place of business. If the assignor or the assignee has a place of business in more than one State, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one State, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person;

(i) "Law" means the law in force in a State other than its rules of private international law;

(j) "Proceeds" means whatever is received in respect of an assigned receivable, whether in total or partial payment or other satisfaction of the receivable. The term includes whatever is received in respect of proceeds. The term does not include returned goods;

(k) "Financial contract" means any spot, forward, future, option or swap transaction involving interest rates, commodities, currencies, equities, bonds, indices or any other financial instrument, any repurchase or securities lending transaction, and any other transaction similar to any transaction referred to above entered into in financial markets and any combination of the transactions mentioned above;

(l) "Netting agreement" means an agreement between two or more parties that provides for one or more of the following:

(i) The net settlement of payments due in the same currency on the same date whether by novation or otherwise;

(ii) Upon the insolvency or other default by a party, the termination of all outstanding transactions at their replacement or fair market values, conversion of such sums into a single currency and netting into a single payment by one party to the other; or

(iii) The set-off of amounts calculated as set forth in subparagraph (l) (ii) of this article under two or more netting agreements;

(m) "Competing claimant" means:

(i) Another assignee of the same receivable from the same assignor, including a person who, by operation of law, claims a right in the assigned receivable as a result of its right in other property of the assignor, even if that receivable is not an international receivable and the assignment to that assignee is not an international assignment;

(ii) A creditor of the assignor; or

(iii) The insolvency administrator.

Article 6
Party autonomy

Subject to article 19, the assignor, the assignee and the debtor may derogate from or vary by agreement provisions of this Convention relating to their respective rights and obligations. Such an agreement does not affect the rights of any person who is not a party to the agreement.

Article 7
Principles of interpretation

1. In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

2. Questions concerning matters governed by this Convention that are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Chapter III
Effects of assignment

Article 8
Effectiveness of assignments

1. An assignment is not ineffective as between the assignor and the assignee or as against the debtor or as against a competing claimant, and the right of an assignee may not be denied priority, on the ground that it is an assignment of more than one receivable, future receivables or parts of or undivided interests in receivables, provided that the receivables are described:

(a) Individually as receivables to which the assignment relates; or

(b) In any other manner, provided that they can, at the time of the assignment or, in the case of future receivables, at the time of conclusion of the original contract, be identified as receivables to which the assignment relates.

2. Unless otherwise agreed, an assignment of one or more future receivables is effective without a new act of transfer being required to assign each receivable.

3. Except as provided in paragraph 1 of this article, article 9 and article 10, paragraphs 2 and 3, this Convention does not affect any limitations on assignments arising from law.

Article 9
Contractual limitations on assignments

1. An assignment of a receivable is effective notwithstanding any agreement between the initial or any subsequent assignor and the debtor or any subsequent assignee limiting in any way the assignor's right to assign its receivables.

2. Nothing in this article affects any obligation or liability of the assignor for breach of such an agreement, but the other party to such agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

3. This article applies only to assignments of receivables:

(a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of real property;

(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;

(c) Representing the payment obligation for a credit card transaction; or

(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

Article 10
Transfer of security rights

1. A personal or property right securing payment of the assigned receivable is transferred to the assignee without a new act of transfer. If such a right, under the law governing it, is transferable only with a new act of transfer, the assignor is obliged to transfer such right and any proceeds to the assignee.

2. A right securing payment of the assigned receivable is transferred under paragraph 1 of this article notwithstanding any agreement between the assignor and the debtor or other person granting that right, limiting in any way the assignor's right to assign the receivable or the right securing payment of the assigned receivable.

3. Nothing in this article affects any obligation or liability of the assignor for breach of any agreement under paragraph 2 of this article, but the other party to that agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not a party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

4. Paragraphs 2 and 3 of this article apply only to assignments of receivables:

(a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of real property;

(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;

(c) Representing the payment obligation for a credit card transaction; or

(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

5. The transfer of a possessory property right under paragraph 1 of this article does not affect any obligations of the assignor to the debtor or the person granting the property right with respect to the property transferred existing under the law governing that property right.

6. Paragraph 1 of this article does not affect any requirement under rules of law other than this Convention relating to the form or registration of the transfer of any rights securing payment of the assigned receivable.

Chapter IV
Rights, obligations and defences

Section I
Assignor and assignee

Article 11
Rights and obligations of the assignor and the assignee

1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are determined by the terms and conditions set forth in that agreement, including any rules or general conditions referred to therein.

2. The assignor and the assignee are bound by any usage to which they have agreed and, unless otherwise agreed, by any practices they have established between themselves.

3. In an international assignment, the assignor and the assignee are considered, unless otherwise agreed, implicitly to have made applicable to the assignment a usage that in international trade is widely known to, and regularly observed by, parties to the particular type of assignment or to the assignment of

Article 12
Representations of the assignor

1. Unless otherwise agreed between the assignor and the assignee, the assignor represents at the time of conclusion of the contract of assignment that:

(a) The assignor has the right to assign the receivable;

(b) The assignor has not previously assigned the receivable to another assignee; and

(c) The debtor does not and will not have any defences or rights of set-off.

2. Unless otherwise agreed between the assignor and the assignee, the assignor does not represent that the debtor has, or will have, the ability to pay.

Article 13
Right to notify the debtor

1. Unless otherwise agreed between the assignor and the assignee, the assignor or the assignee or both may send the debtor notification of the assignment and a payment instruction, but after notification has been sent only the assignee may send such an instruction.

2. Notification of the assignment or a payment instruction sent in breach of any agreement referred to in paragraph 1 of this article is not ineffective for the purposes of article 17 by reason of such breach. However, nothing in this article affects any obligation or liability of the party in breach of such an agreement for any damages arising as a result of the breach.

Article 14
Right to payment

1. As between the assignor and the assignee, unless otherwise agreed and whether or not notification of the assignment has been sent:

(a) If payment in respect of the assigned receivable is made to the assignee, the assignee is entitled to retain the proceeds and goods returned in respect of the assigned receivable;

(b) If payment in respect of the assigned receivable is made to the assignor, the assignee is entitled to payment of the proceeds and also to goods

(c) If payment in respect of the assigned receivable is made to another person over whom the assignee has priority, the assignee is entitled to payment of the proceeds and also to goods returned to such person in respect of the assigned receivable.

2. The assignee may not retain more than the value of its right in the receivable.

Section II
Debtor

Article 15
Principle of debtor protection

1. Except as otherwise provided in this Convention, an assignment does not, without the consent of the debtor, affect the rights and obligations of the debtor, including the payment terms contained in the original contract.

2. A payment instruction may change the person, address or account to which the debtor is required to make payment, but may not change:

(a) The currency of payment specified in the original contract; or

(b) The State specified in the original contract in which payment is to be made to a State other than that in which the debtor is located.

Article 16
Notification of the debtor

1. Notification of the assignment or a payment instruction is effective when received by the debtor if it is in a language that is reasonably expected to inform the debtor about its contents. It is sufficient if notification of the assignment or a payment instruction is in the language of the original contract.

2. Notification of the assignment or a payment instruction may relate to receivables arising after notification.

3. Notification of a subsequent assignment constitutes notification of all prior assignments.

Article 17
Debtor's discharge by payment

1. Until the debtor receives notification of the assignment, subject to paragraphs 3 to 8 of this article, the debtor is discharged only by paying the assignee or, if otherwise instructed in the notification of the assignment or subsequently by the assignee in a writing received by the debtor, in accordance with such payment instruction.

2. After the debtor receives notification of the assignment, subject to paragraphs 3 to 8 of this article, the debtor is discharged only by paying the assignee or, if otherwise instructed in the notification of the assignment or subsequently by the assignee in a writing received by the debtor, in accordance with such payment instruction.

3. If the debtor receives more than one payment instruction relating to a single assignment of the same receivable by the same assignor, the debtor is discharged by paying in accordance with the last payment instruction received from the assignee before payment.

4. If the debtor receives notification of more than one assignment of the same receivable made by the same assignor, the debtor is discharged by paying in accordance with the first notification received.

5. If the debtor receives notification of one or more subsequent assignments, the debtor is discharged by paying in accordance with the notification of the last of such subsequent assignments.

6. If the debtor receives notification of the assignment of a part of or an undivided interest in one or more receivables, the debtor is discharged by paying in accordance with the notification or in accordance with this article as if the debtor had not received the notification. If the debtor pays in accordance with the notification, the debtor is discharged only to the extent of the part or undivided interest paid.

7. If the debtor receives notification of the assignment from the assignee, the debtor is entitled to request the assignee to provide within a reasonable period of time adequate proof that the assignment from the initial assignor to the initial assignee and any intermediate assignment have been made and, unless the assignee does so, the debtor is discharged by paying in accordance with this article as if the notification from the assignee had not been received. Adequate proof of an assignment includes but is not limited to any writing emanating from the assignor and indicating that the assignment has taken place.

8. This article does not affect any other ground on which payment by the debtor to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund discharges the debtor.

Article 18
Defences and rights of set-off of the debtor

1. In a claim by the assignee against the debtor for payment of the assigned receivable, the debtor may raise against the assignee all defences and rights of set-off arising from the original contract, or any other contract that was part of the same transaction, of which the debtor could avail itself as if the assignment had not been made and such claim were made by the assignor.

2. The debtor may raise against the assignee any other right of set-off, provided that it was available to the debtor at the time notification of the assignment was received by the debtor.

3. Notwithstanding paragraphs 1 and 2 of this article, defences and rights of set-off that the debtor may raise pursuant to article 9 or 10 against the assignor for breach of an agreement limiting in any way the assignor's right to make the assignment are not available to the debtor against the assignee.

Article 19
Agreement not to raise defences or rights of set-off

1. The debtor may agree with the assignor in a writing signed by the debtor not to raise against the assignee the defences and rights of set-off that it could raise pursuant to article 18. Such an agreement precludes the debtor from raising against the assignee those defences and rights of set-off.

2. The debtor may not waive defences:

(a) Arising from fraudulent acts on the part of the assignee; or

(b) Based on the debtor's incapacity.

3. Such an agreement may be modified only by an agreement in a writing signed by the debtor. The effect of such a modification as against the assignee is determined by article 20, paragraph 2.

Article 20
Modification of the original contract

1. An agreement concluded before notification of the assignment between the assignor and the debtor that affects the assignee's rights is effective as against the assignee, and the assignee acquires corresponding rights.

2. An agreement concluded after notification of the assignment between the assignor and the debtor that affects the assignee's rights is ineffective as against the assignee unless:

(a) The assignee consents to it; or

(b) The receivable is not fully earned by performance and either the modification is provided for in the original contract or, in the context of the original contract, a reasonable assignee would consent to the modification.

3. Paragraphs 1 and 2 of this article do not affect any right of the assignor or the assignee arising from breach of an agreement between them.

Article 21
Recovery of payments

Failure of the assignor to perform the original contract does not entitle the debtor to recover from the assignee a sum paid by the debtor to the assignor or the assignee.

Section III
Third parties

Article 22
Law applicable to competing rights

With the exception of matters that are settled elsewhere in this Convention and subject to articles 23 and 24, the law of the State in which the assignor is located governs the priority of the right of an assignee in the assigned receivable over the right of a competing claimant.

Article 23
Public policy and mandatory rules

1. The application of a provision of the law of the State in which the assignor is located may be refused only if the application of that provision is manifestly contrary to the public policy of the forum State.

2. The rules of the law of either the forum State or any other State that are mandatory irrespective of the law otherwise applicable may not prevent the application of a provision of the law of the State in which the assignor is located.

3. Notwithstanding paragraph 2 of this article, in an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding article 22. A State may deposit at any time a declaration identifying any such preferential right.

Article 24
Special rules on proceeds

1. If proceeds are received by the assignee, the assignee is entitled to retain those proceeds to the extent that the assignee's right in the assigned receivable had priority over the right of a competing claimant in the assigned receivable.

2. If proceeds are received by the assignor, the right of the assignee in those proceeds has priority over the right of a competing claimant in those proceeds to the same extent as the assignee's right had priority over the right in the assigned receivable of that claimant if:

(a) The assignor has received the proceeds under instructions from the assignee to hold the proceeds for the benefit of the assignee; and

(b) The proceeds are held by the assignor for the benefit of the assignee separately and are reasonably identifiable from the assets of the assignor, such as in the case of a separate deposit or securities account containing only proceeds consisting of cash or securities.

3. Nothing in paragraph 2 of this article affects the priority of a person having against the proceeds a right of set-off or a right created by agreement and not derived from a right in the receivable.

Article 25
Subordination

An assignee entitled to priority may at any time subordinate its priority unilaterally or by agreement in favour of any existing or future assignees.

Chapter V
Autonomous conflict-of-laws rules

Article 26
Application of chapter V

The provisions of this chapter apply to matters that are:

(a) Within the scope of this Convention as provided in article 1, paragraph 4; and

(b) Otherwise within the scope of this Convention but not settled elsewhere in it.

Article 27
Form of a contract of assignment

1. A contract of assignment concluded between persons who are located in the same State is formally valid as between them if it satisfies the requirements of either the law which governs it or the law of the State in which it is concluded.

2. A contract of assignment concluded between persons who are located in different States is formally valid as between them if it satisfies the requirements of either the law which governs it or the law of one of those States.

Article 28
Law applicable to the mutual rights and obligations of the assignor and the assignee

1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are governed by the law chosen by them.

2. In the absence of a choice of law by the assignor and the assignee, their mutual rights and obligations arising from their agreement are governed by the law of the State with which the contract of assignment is most closely connected.

Article 29
Law applicable to the rights and obligations of the assignee and the debtor

The law governing the original contract determines the effectiveness of contractual limitations on assignment as between the assignee and the debtor, the relationship between the assignee and the debtor, the conditions under which the assignment can be

invoked against the debtor and whether the debtor's obligations have been discharged.

Article 30
Law applicable to priority

1. The law of the State in which the assignor is located governs the priority of the right of an assignee in the assigned receivable over the right of a competing claimant.

2. The rules of the law of either the forum State or any other State that are mandatory irrespective of the law otherwise applicable may not prevent the application of a provision of the law of the State in which the assignor is located.

3. Notwithstanding paragraph 2 of this article, in an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding paragraph 1 of this article.

Article 31
Mandatory rules

1. Nothing in articles 28 and 29 restricts the application of the rules of the law of the forum State in a situation where they are mandatory irrespective of the law otherwise applicable.

2. Nothing in articles 28 and 29 restricts the application of the mandatory rules of the law of another State with which the matters settled in those articles have a close connection if and in so far as, under the law of that other State, those rules must be applied irrespective of the law otherwise applicable.

Article 32
Public policy

With regard to matters settled in this chapter, the application of a provision of the law specified in this chapter may be refused only if the application of that provision is manifestly contrary to the public policy of the forum State.

Chapter VI
Final provisions

Article 33
Depositary

The Secretary-General of the United Nations is the depositary of this Convention.

Article 34
Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States at the Headquarters of the United Nations in New York until [...].*

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. This Convention is open to accession by all States that are not signatory States as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 35
Application to territorial units

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may at any time declare that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.

2. Such declarations are to state expressly the territorial units to which this Convention extends.

3. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the assignor or the debtor is located in a territorial unit to which this Convention does not extend, this location is considered not to be in a Contracting State.

4. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the law governing the

* Two years after the date of the adoption of the Convention by the General Assembly.

original contract is the law in force in a territorial unit to which this Convention does not extend, the law governing the original contract is considered not to be the law of a Contracting State.

5. If a State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 36
Location in a territorial unit

If a person is located in a State which has two or more territorial units, that person is located in the territorial unit in which it has its place of business. If the assignor or the assignee has a place of business in more than one territorial unit, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one territorial unit, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person. A State with two or more territorial units may specify by declaration at any time other rules for determining the location of a person within that State.

Article 37
Applicable law in territorial units

Any reference in this Convention to the law of a State means, in the case of a State which has two or more territorial units, the law in force in the territorial unit. Such a State may specify by declaration at any time other rules for determining the applicable law, including rules that render applicable the law of another territorial unit of that State.

Article 38
Conflicts with other international agreements

1. This Convention does not prevail over any international agreement that has already been or may be entered into and that specifically governs a transaction otherwise governed by this Convention.

2. Notwithstanding paragraph 1 of this article, this Convention prevails over the Unidroit Convention on International Factoring ("the Ottawa Convention"). To the extent that this Convention does not apply to the rights and obligations of a debtor, it does not preclude the application of the Ottawa Convention with respect to the rights and obligations of that debtor.

Article 39
Declaration on application of chapter V

A State may declare at any time that it will not be bound by chapter V.

Article 40
Limitations relating to Governments and other public entities

A State may declare at any time that it will not be bound or the extent to which it will not be bound by articles 9 and 10 if the debtor or any person granting a personal or property right securing payment of the assigned receivable is located in that State at the time of conclusion of the original contract and is a Government, central or local, any subdivision thereof, or an entity constituted for a public purpose. If a State has made such a declaration, articles 9 and 10 do not affect the rights and obligations of that debtor or person. A State may list in a declaration the types of entity that are the subject of a declaration.

Article 41
Other exclusions

1. A State may declare at any time that it will not apply this Convention to specific types of assignment or to the assignment of specific categories of receivables clearly described in a declaration.

2. After a declaration under paragraph 1 of this article takes effect:

(a) This Convention does not apply to such types of assignment or to the assignment of such categories of receivables if the assignor is located at the time of conclusion of the contract of assignment in such a State; and

(b) The provisions of this Convention that affect the rights and obligations of the debtor do not apply if, at the time of conclusion of the original contract, the debtor is located in such a State or the law governing the original contract is the law of such a State.

3. This article does not apply to assignments of receivables listed in article 9, paragraph 3.

Article 42
Application of the annex

1. A State may at any time declare that it will be bound by:

(a) The priority rules set forth in section I of the annex and will participate in the international registration system established pursuant to section II of the annex;

(b) The priority rules set forth in section I of the annex and will effectuate such rules by use of a registration system that fulfils the purposes of such rules, in which case, for the purposes of section I of the annex, registration pursuant to such a system has the same effect as registration pursuant to section II of the annex;

(c) The priority rules set forth in section III of the annex;

(d) The priority rules set forth in section IV of the annex; or

(e) The priority rules set forth in articles 7 and 9 of the annex.

2. For the purposes of article 22:

(a) The law of a State that has made a declaration pursuant to paragraph 1 (a) or (b) of this article is the set of rules set forth in section I of the annex, as affected by any declaration made pursuant to paragraph 5 of this article;

(b) The law of a State that has made a declaration pursuant to paragraph 1 (c) of this article is the set of rules set forth in section III of the annex, as affected by any declaration made pursuant to paragraph 5 of this article;

(c) The law of a State that has made a declaration pursuant to paragraph 1 (d) of this article is the set of rules set forth in section IV of the annex, as affected by any declaration made pursuant to paragraph 5 of this article; and

(d) The law of a State that has made a declaration pursuant to paragraph 1 (e) of this article is the set of rules set forth in articles 7 and 9 of the annex, as affected by any declaration made pursuant to paragraph 5 of this article.

3. A State that has made a declaration pursuant to paragraph 1 of this article may establish rules pursuant to which assignments made before the declaration takes effect become subject to those rules within a reasonable time.

4. A State that has not made a declaration pursuant to paragraph 1 of this article may, in accordance with priority rules in force in that State, utilize the registration system established pursuant to section II of the annex.

5. At the time a State makes a declaration pursuant to paragraph 1 of this article or thereafter, it may declare that:

(a) It will not apply the priority rules chosen under paragraph 1 of this article to certain types of assignment or to the assignment of certain categories of receivables; or

(b) It will apply those priority rules with modifications specified in that declaration.

6. At the request of Contracting or Signatory States to this Convention comprising not less than one third of the Contracting and Signatory States, the depositary shall convene a conference of the Contracting and Signatory States to designate the supervising authority and the first registrar and to prepare or revise the regulations referred to in section II of the annex.

Article 43
Effect of declaration

1. Declarations made under articles 35, paragraphs 1, 36, 37 or 39 to 42 at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

4. A State that makes a declaration under articles 35, paragraphs 1, 36, 37 or 39 to 42 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal

takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

5. In the case of a declaration under articles 35, paragraphs 1, 36, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become applicable:

(a) Except as provided in paragraph 5 (b) of this article, that rule is applicable only to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a);

(b) A rule that deals with the rights and obligations of the debtor applies only in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

6. In the case of a declaration under articles 35, paragraphs 1, 36, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become inapplicable:

(a) Except as provided in paragraph 6 (b) of this article, that rule is inapplicable to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a);

(b) A rule that deals with the rights and obligations of the debtor is inapplicable in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

7. If a rule rendered applicable or inapplicable as a result of a declaration or withdrawal referred to in paragraph 5 or 6 of this article is relevant to the determination of priority with respect to a receivable for which the contract of assignment is concluded before such declaration or withdrawal takes effect or with respect to its proceeds, the right of the assignee has priority over the right of a competing claimant to the extent that, under the law that would determine priority before such declaration or withdrawal takes effect, the right of the assignee would have priority.

Article 44
Reservations

No reservations are permitted except those expressly authorized in this Convention.

Article 45
Entry into force

1. This Convention enters into force on the first day of the month following the expiration of six months from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession with the depositary.

2. For each State that becomes a Contracting State to this Convention after the date of deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the appropriate instrument on behalf of that State.

3. This Convention applies only to assignments if the contract of assignment is concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1 (a), provided that the provisions of this Convention that deal with the rights and obligations of the debtor apply only to assignments of receivables arising from original contracts concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 3.

4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1 (a), the right of the assignee has priority over the right of a competing claimant with respect to the receivable to the extent that, under the law that would determine priority in the absence of this Convention, the right of the assignee would have priority.

Article 46
Denunciation

1. A Contracting State may denounce this Convention at any time by written notification addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

3. This Convention remains applicable to assignments if the contract of assignment is concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a), provided that the provisions of this Convention that deal with the rights and obligations of the debtor remain applicable only to assignments of receivables arising from original contracts concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a), the right of the assignee has priority over the right of a competing claimant with respect to the receivable to the extent that, under the law that would determine priority under this Convention, the right of the assignee would have priority.

Article 47
Revision and amendment

1. At the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States to revise or amend it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Annex to the draft Convention

Section I
Priority rules based on registration

Article 1
Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which data about the assignment are registered under section II of this annex, regardless of the time of transfer of the receivable. If no such data are registered, priority is determined by the order of conclusion of the respective contracts of assignment.

Article 2
Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned, and data about the assignment were registered under section II of this annex, before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Section II
Registration

Article 3
Establishment of a registration system

A registration system will be established for the registration of data about assignments, even if the relevant assignment or receivable is not international, pursuant to the regulations to be promulgated by the registrar and the supervising authority. Regulations promulgated by the registrar and the supervising authority under this annex shall be consistent with this annex. The regulations will prescribe in detail the manner in which the registration system will operate, as well as the procedure for resolving disputes relating to that operation.

Article 4
Registration

1. Any person may register data with regard to an assignment at the registry in accordance with this annex and the regulations. As provided in the regulations, the data registered shall be the identification of the assignor and the assignee and a brief description of the assigned receivables.

2. A single registration may cover one or more assignments by the assignor to the assignee of one or more existing or future receivables, irrespective of whether the receivables exist at the time of registration.

3. A registration may be made in advance of the assignment to which it relates. The regulations will establish the procedure for the cancellation of a registration in the event that the assignment is not made.

4. Registration or its amendment is effective from the time when the data set forth in paragraph 1 of this article are available to searchers. The registering party may specify, from options set forth in the regulations, a period of effectiveness for the registration. In the absence of such a specification, a registration is effective for a period of five years.

5. Regulations will specify the manner in which registration may be renewed, amended or cancelled and regulate such other matters as are necessary for the operation of the registration system.

6. Any defect, irregularity, omission or error with regard to the identification of the assignor that would result in data registered not being found upon a search based on a proper identification of the assignor renders the registration ineffective.

Article 5
Registry searches

1. Any person may search the records of the registry according to identification of the assignor, as set forth in the regulations, and obtain a search result in writing.

2. A search result in writing that purports to be issued by the registry is admissible as evidence and is, in the absence of evidence to the contrary, proof of the registration of the data to which the search relates, including the date and hour of registration.

Section III
Priority rules based on the time of the contract of assignment

Article 6
Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order of conclusion of the respective contracts of assignment.

Article 7
Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Article 8
Proof of time of contract of assignment

The time of conclusion of a contract of assignment in respect of articles 6 and 7 of this annex may be proved by any means, including witnesses.

Section IV
Priority rules based on the time of notification of assignment

Article 9
Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which notification of the respective assignments is received by the debtor. However, an assignee may not obtain priority over a prior assignment of which the assignee had knowledge at the time of conclusion of the contract of assignment to that assignee by notifying the debtor.

Article 10

Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned and notification was received by the debtor before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Appendix

Renumbering of articles

1. Draft Convention

Current article number (annex I to the present document)	*Former article number (A/CN.9/486, annex I)*
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	9
9	11
10	12
11	13
12	14
13	15
14	16
15	17
16	18
17	19
18	20
19	21
20	22
21	23
22	24
23	25
24	26
25	27
26	28
27	New article
28	29
29	30
30	31
31	32
32	33
33	34
34	35
35	36
36	37
37	New article
38	38
39	39
40	40

Current article number (annex I to the present document)	*Former article number (A/CN.9/486, annex I)*
41	41
42	42
43	43
44	44
45	45
46	46
47	47

2. Annex to the draft Convention

Current article number (annex I to the present document)	*Former article number (A/CN.9/486, annex I)*
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	New article
9	8
10	9

Annex II

UNCITRAL Model Law on Electronic Signatures (2001)

Article 1
Sphere of application

This Law applies where electronic signatures are used in the context* of commercial** activities. It does not override any rule of law intended for the protection of consumers.

Article 2
Definitions

For the purposes of this Law:

(a) "Electronic signature" means data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory's approval of the information contained in the data message;

(b) "Certificate" means a data message or other record confirming the link between a signatory and signature creation data;

(c) "Data message" means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

(d) "Signatory" means a person that holds signature creation data and acts either on its own behalf or on behalf of the person it represents;

(e) "Certification service provider" means a person that issues certificates and may provide other services related to electronic signatures;

(f) "Relying party" means a person that may act on the basis of a certificate or an electronic signature.

Article 3
Equal treatment of signature technologies

Nothing in this Law, except article 5, shall be applied so as to exclude, restrict or deprive of legal effect any method of creating an electronic signature that satisfies the requirements referred to in article 6, paragraph 1, or otherwise meets the requirements of applicable law.

Article 4
Interpretation

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 5
Variation by agreement

The provisions of this Law may be derogated from or their effect may be varied by agreement, unless that agreement would not be valid or effective under applicable law.

Article 6
Compliance with a requirement for a signature

1. Where the law requires a signature of a person, that requirement is met in relation to a data

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* The Commission suggests the following text for States that might wish to extend the applicability of this Law:

"This Law applies where electronic signatures are used, except in the following situations: [...]."

** The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

message if an electronic signature is used that is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.

2. Paragraph 1 applies whether the requirement referred to therein is in the form of an obligation or whether the law simply provides consequences for the absence of a signature.

3. An electronic signature is considered to be reliable for the purpose of satisfying the requirement referred to in paragraph 1 if:

(a) The signature creation data are, within the context in which they are used, linked to the signatory and to no other person;

(b) The signature creation data were, at the time of signing, under the control of the signatory and of no other person;

(c) Any alteration to the electronic signature, made after the time of signing, is detectable; and

(d) Where a purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.

4. Paragraph 3 does not limit the ability of any person:

(a) To establish in any other way, for the purpose of satisfying the requirement referred to in paragraph 1, the reliability of an electronic signature; or

(b) To adduce evidence of the non-reliability of an electronic signature.

5. The provisions of this article do not apply to the following: [...].

Article 7
Satisfaction of article 6

1. [*Any person, organ or authority, whether public or private, specified by the enacting State as competent*] may determine which electronic signatures satisfy the provisions of article 6 of this Law.

2. Any determination made under paragraph 1 shall be consistent with recognized international standards.

3. Nothing in this article affects the operation of the rules of private international law.

Article 8
Conduct of the signatory

1. Where signature creation data can be used to create a signature that has legal effect, each signatory shall:

(a) Exercise reasonable care to avoid unauthorized use of its signature creation data;

(b) Without undue delay, utilize means made available by the certification service provider pursuant to article 9 of this Law, or otherwise use reasonable efforts, to notify any person that may reasonably be expected by the signatory to rely on or to provide services in support of the electronic signature if:

(i) The signatory knows that the signature creation data have been compromised; or

(ii) The circumstances known to the signatory give rise to a substantial risk that the signature creation data may have been compromised;

(c) Where a certificate is used to support the electronic signature, exercise reasonable care to ensure the accuracy and completeness of all material representations made by the signatory that are relevant to the certificate throughout its life cycle or that are to be included in the certificate.

2. A signatory shall bear the legal consequences of its failure to satisfy the requirements of paragraph 1.

Article 9
Conduct of the certification service provider

1. Where a certification service provider provides services to support an electronic signature that may be used for legal effect as a signature, that certification service provider shall:

(a) Act in accordance with representations made by it with respect to its policies and practices;

(b) Exercise reasonable care to ensure the accuracy and completeness of all material representations made by it that are relevant to the certificate

throughout its life cycle or that are included in the certificate;

(c) Provide reasonably accessible means that enable a relying party to ascertain from the certificate:

(i) The identity of the certification service provider;

(ii) That the signatory that is identified in the certificate had control of the signature creation data at the time when the certificate was issued;

(iii) That signature creation data were valid at or before the time when the certificate was issued;

(d) Provide reasonably accessible means that enable a relying party to ascertain, where relevant, from the certificate or otherwise:

(i) The method used to identify the signatory;

(ii) Any limitation on the purpose or value for which the signature creation data or the certificate may be used;

(iii) That the signature creation data are valid and have not been compromised;

(iv) Any limitation on the scope or extent of liability stipulated by the certification service provider;

(v) Whether means exist for the signatory to give notice pursuant to article 8, paragraph 1 (b), of this Law;

(vi) Whether a timely revocation service is offered;

(e) Where services under subparagraph (d) (v) are offered, provide a means for a signatory to give notice pursuant to article 8, paragraph 1 (b), of this Law and, where services under subparagraph (d) (vi) are offered, ensure the availability of a timely revocation service;

(f) Utilize trustworthy systems, procedures and human resources in performing its services.

2. A certification service provider shall bear the legal consequences of its failure to satisfy the requirements of paragraph 1.

Article 10
Trustworthiness

For the purposes of article 9, paragraph 1 (f), of this Law in determining whether, or to what extent, any systems, procedures and human resources utilized by a certification service provider are trustworthy, regard may be had to the following factors:

(a) Financial and human resources, including existence of assets;

(b) Quality of hardware and software systems;

(c) Procedures for processing of certificates and applications for certificates and retention of records;

(d) Availability of information to signatories identified in certificates and to potential relying parties;

(e) Regularity and extent of audit by an independent body;

(f) The existence of a declaration by the State, an accreditation body or the certification service provider regarding compliance with or existence of the foregoing; or

(g) Any other relevant factor.

Article 11
Conduct of the relying party

A relying party shall bear the legal consequences of its failure:

(a) To take reasonable steps to verify the reliability of an electronic signature; or

(b) Where an electronic signature is supported by a certificate, to take reasonable steps:

(i) To verify the validity, suspension or revocation of the certificate; and

(ii) To observe any limitation with respect to the certificate.

Article 12
Recognition of foreign certificates and electronic signatures

1. In determining whether, or to what extent, a certificate or an electronic signature is legally effective, no regard shall be had:

(a) To the geographic location where the certificate is issued or the electronic signature created or used; or

(b) To the geographic location of the place of business of the issuer or signatory.

2. A certificate issued outside [*the enacting State*] shall have the same legal effect in [*the enacting State*] as a certificate issued in [*the enacting State*] if it offers a substantially equivalent level of reliability.

3. An electronic signature created or used outside [*the enacting State*] shall have the same legal effect in [*the enacting State*] as an electronic signature created or used in [*the enacting State*] if it offers a substantially equivalent level of reliability.

4. In determining whether a certificate or an electronic signature offers a substantially equivalent level of reliability for the purposes of paragraph 2 or 3, regard shall be had to recognized international standards and to any other relevant factors.

5. Where, notwithstanding paragraphs 2, 3 and 4, parties agree, as between themselves, to the use of certain types of electronic signatures or certificates, that agreement shall be recognized as sufficient for the purposes of cross-border recognition, unless that agreement would not be valid or effective under applicable law.

Annex III

List of documents before the Commission at its thirty-fourth session

Symbol	*Title or description*
A/CN.9/482 and Corr.1 and 2	Provisional agenda, annotations thereto and scheduling of meetings of the thirty-fourth session
A/CN.9/483	Report of the Working Group on Electronic Commerce on its thirty-seventh session
A/CN.9/484	Report of the Working Group on Electronic Commerce on its thirty-eighth session
A/CN.9/485 and Corr.1	Report of the Working Group on Arbitration on its thirty-third session
A/CN.9/486	Report of the Working Group on International Contract Practices on its twenty-third session
A/CN.9/487	Report of the Working Group on Arbitration on its thirty-fourth session
A/CN.9/488	Note by the Secretariat on possible future work on privately financed infrastructure projects
A/CN.9/489 and Add. 1	Note by the Secretariat on receivables financing: analytical commentary on the draft Convention on Assignment of Receivables in International Trade
A/CN.9/490 and Add.1-5	Draft Convention on Assignment of Receivables in International Trade: compilation of comments by Governments and international organizations
A/CN.9/491 and Add.1	Receivables financing: draft Convention on Assignment of Receivables in International Trade—comments on pending and other issues
A/CN.9/492 and Add.1-3	Draft Model Law on Electronic Signatures: compilation of comments by Governments and international organizations
A/CN.9/493	Note by the Secretariat on electronic signatures: draft Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures
A/CN.9/494	Note by the Secretariat on training and technical assistance
A/CN.9/495	Report on the UNCITRAL/INSOL/IBA Global Insolvency Colloquium (Vienna, 4-6 December 2000)
A/CN.9/496	Note by the Secretariat on security interests
A/CN.9/497	Report of the Secretary-General on possible future work on transport law
A/CN.9/498	Note by the Secretariat on uniform interpretation of UNCITRAL texts: sample digest of case law on the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)
A/CN.9/499	Note by the Secretariat on working methods of the Commission
A/CN.9/500	Note by the Secretariat on increase of the membership of the Commission
A/CN.9/501 and Corr.1	Note by the Secretariat on the status of conventions and model laws
A/CN.9/502 and Corr.1	Note by the Secretariat on a bibliography of recent writings related to the work of UNCITRAL

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